

**United States Department of Labor
Employees' Compensation Appeals Board**

M.A., Appellant

and

**DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT ADMINISTRATION,
Arlington, VA, Employer**

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**Docket No. 10-708
Issued: November 24, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2010 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated October 29 and December 21, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to an additional schedule award for her left or right upper extremities; (2) whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 27-year-old clerk typist, injured her chest and left arm while lifting a folder on August 16, 1989. She filed a claim for benefits on August 22, 1989, which the Office accepted for cervical strain and aggravation of bilateral carpal tunnel syndrome.

On June 5, 2001 the Office granted appellant schedule awards for 20 percent permanent impairment of both the right and left upper extremities. The awards ran for the period April 16, 2001 to September 6, 2003.

On September 30, 2004 appellant filed a (Form CA-7) claim for an additional schedule award based on a partial loss of use of her right and left upper extremities.

By decisions dated August 25 and December 19, 2005, the Office found that appellant did not have more than 20 percent impairment to each arm.

On July 16, 2009 appellant filed a Form CA-7 claim for an additional schedule award based on loss of use of her right and left upper extremities.

By letter dated August 13, 2009, the Office asked appellant to submit a medical report from a treating physician in support of her claim for an additional schedule award. It requested that a physician provide an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* sixth edition (the A.M.A., *Guides*). Appellant did not respond to this request.

In a decision dated October 29, 2009, the Office denied appellant's request for an additional schedule award.

On November 16, 2009 appellant requested reconsideration.

In an October 5, 2009 report, received by the Office on December 7, 2009, Dr. Nalini Baijnath, Board-certified in family practice, stated that she examined appellant on September 24, 2009. She noted that appellant had a history of carpal tunnel syndrome, for which she underwent surgery. Dr. Baijnath noted that appellant sustained permanent injury to her median nerve and experienced chronic back pain, in addition to severe post-traumatic stress disorder with major depression and pulmonary hypertension. She found that appellant had reached maximal medical improvement. Dr. Baijnath concluded that appellant was disabled for employment and stated that the current findings from her recent visits did not indicate any change in the level of her functioning.

By decision dated December 21, 2009, the Office denied appellant's request for reconsideration on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require further merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing federal regulations,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides*, as the uniform standard applicable to all claimants.³ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁴ If the employee alleges entitlement to additional impairment of an extremity for which a schedule award has previously been granted, the employee must submit some evidence of increased impairment to this extremity.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for cervical strain and aggravation of bilateral carpal tunnel syndrome. It granted her schedule awards for a 20 percent permanent impairment to both upper extremities on June 5, 2001. On July 16, 2009 appellant submitted another request for additional schedule awards for greater impairment.

Appellant has the burden of proving that she sustained greater permanent impairment. The Office advised her of the medical evidence required to establish her claim; however, she failed to submit any new medical evidence pertaining to her claim since the Offices' December 19, 2005 decision. Because she did not submit medical evidence to establish that she sustained greater permanent impairment to her upper extremities, the Office properly denied an additional schedule award due to her accepted cervical and bilateral carpal tunnel conditions.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷

ANALYSIS -- ISSUE 2

Appellant did not show that the Office erroneously applied or interpreted a specific point of law; she did not advance a relevant legal argument not previously considered by the Office; and she did not submit relevant or pertinent evidence not previously considered by the Office. Appellant submitted an October 5, 2009 report from Dr. Baijnath's with her November 16, 2009 reconsideration request; however, she did not address the underlying issue of permanent

³ *Id.* at § 10.404(a).

⁴ See FECA Bulletin No. 09-03 (issued March 15, 2008).

⁵ See generally *Veronica Williams*, 56 ECAB 367, 370 (2005) for discussion of burden of proof in a schedule award claim.

⁶ 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

impairment. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁸ This evidence is not relevant to the issue of whether appellant sustained greater impairment to her arms due to the accepted cervical and bilateral carpal tunnel conditions. The report noted appellant's treatment for carpal tunnel syndrome, chronic back pain, severe post-traumatic stress disorder with major depression and pulmonary hypertension. The report did not provide any impairment rating based on a recent medical evaluation, as the Office had requested. Appellant's reconsideration request failed to establish that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by it. The Office did not abuse its discretion by refusing to reopen appellant's claim for further review on the merits.

CONCLUSION

The Board finds that appellant did not establish greater permanent impairment to her left or right upper extremities than the 20 percent previously awarded. The Board finds that the Office properly refused to reopen her case for reconsideration of the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 21 and October 29, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 24, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *David J. McDonald*, 50 ECAB 185 (1998).