

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

A.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

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**Docket No. 10-687
Issued: October 20, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 19, 2010 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated December 10 and 28, 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 sustained any permanent impairment to a scheduled member of her body causally related to her neck and left shoulder sprain; and (2) whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 16, 2008 appellant, a 40-year-old clerk, filed an occupational disease claim alleging that she developed left shoulder and neck conditions causally related to factors of her employment. The Office accepted neck and left shoulder sprains.

In a report dated June 12, 2008, Dr. Arthur L. Sarris, a specialist in orthopedic surgery, stated on examination that appellant had restriction of cervical motion in all directions, with tightness of the cervical muscles. He advised that her motor and sensory examination was within

normal limits, although she had some equivocal findings in her sensory examination involving mainly the C4 and C5 root, extending partially into the C6 and C7 roots. Dr. Sarris advised that appellant underwent an April 24, 2008 electromyogram/nerve conduction (EMG/NCV) study which showed radiculopathy of the right C7 nerve root. He reviewed x-rays appellant brought to the examination which demonstrated spurring of the anterior inferior cervical vertebral body at C3 and C4 and the anterior superior body of C7, with some narrowing at C3-4.

On November 13, 2008 appellant filed a claim for a schedule award based on a partial loss of use of her left upper extremity.

In an October 30, 2008 report, Dr. Ronnie D. Shade, Board-certified in orthopedic surgery, found that appellant had a 36 percent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). In rating impairment, he addressed the following factors: 12 percent impairment for loss of range of motion of the left shoulder; 9 percent impairment for sensory and motor deficit at C5; 11 percent impairment for sensory and motor deficit at C6; and 10 percent impairment for sensory and motor deficit at C7. Dr. Shade rated a total 36 percent left upper extremity impairment by combining the above figures pursuant to the Combined Values Chart.

In a January 5, 2009 report, an Office medical adviser stated that the reports from Drs. Sarris and Shade contained inconsistent physical findings; therefore, he was unable to ascertain whether appellant had any permanent impairment. The Office medical adviser recommended that appellant be referred for a second opinion examination to determine if she had any upper extremity impairment from her accepted cervical and left shoulder conditions.

By letter dated November 6, 2009, the Office referred appellant for a second opinion examination with Dr. John Sklar, Board-certified in orthopedic surgery. The examination was scheduled for November 30, 2009. Appellant failed to attend this examination.

By decision dated December 10, 2009, the Office denied appellant's claim for a schedule award. It found that she failed to attend the second opinion examination scheduled to determine whether she had any ratable impairment due to her accepted conditions. The medical opinion evidence was insufficient to establish her entitlement to a schedule award as it did not establish permanent loss or loss of use of a scheduled member or function of the body.

On December 14, 2009 appellant requested reconsideration. She did not submit any medical evidence with her request.

By decision dated December 28, 2009, the Office denied appellant's application for review 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 Act,¹ and its implementing federal regulations,² set forth the number of weeks of compensation payable to

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

² 20 C.F.R. § 10.404.

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 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 The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for neck and left shoulder sprain. On January 5, 2009 the Office medical adviser noted that the record contained contradictory findings from the two physicians who examined appellant, Dr. Sarris and Dr. Shade. He recommended further development of the medical evidence in order to establish the nature and extent of any permanent impairment of her left upper extremity causally related to her accepted left shoulder and neck sprain; however, appellant did not attend this examination. The Office determined in its December 10, 2009 decision that there was insufficient medical opinion evidence of record to establish that appellant had sustained any permanent impairment under the A.M.A., *Guides*.

The Board notes that it is appellant's burden to prove that the condition for which a schedule award is sought caused permanent impairment.⁶ The Office advised appellant of the evidence required to establish her claim and informed her by letter dated November 6, 2009 that she was scheduled for a second opinion impairment evaluation with Dr. Sklar. In light of appellant's failure to attend this examination, there is insufficient evidence to establish that she sustained any permanent impairment of her left arm as claimed. The Office properly found that appellant was not entitled to a schedule award due to her accepted left shoulder and neck 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 constituting relevant and pertinent evidence not previously considered by the Office.⁷ 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.⁸

³ *Id.* at § 10.404(a).

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

⁵ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁶ See *Peter C. Belkind*, 56 ECAB 580 (2005).

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

⁸ *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS -- ISSUE 2

Appellant did not establish 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; or submit relevant and pertinent evidence not previously considered by the Office. She did not submit any new medical evidence with her request for reconsideration. Appellant merely check marked her request on the Office's appeal request form. The Office did not abuse its discretion in refusing to reopen her claim for further review on the merits.

CONCLUSION

The Board finds that appellant did not sustain any permanent impairment to her left arm related to her accepted neck and left shoulder condition. The Board also finds that the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 28 and 10, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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