United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 08-1730**
	)	**Issued: March 16, 2009**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

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 June 4, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 5, 2007 and January 17, 2008 merit decisions, denying his claim for a schedule award, and a May 19, 2008 decision denying his request for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he is entitled to a schedule award due to his employment injury; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 7, 2006 appellant, then a 51-year-old toolmaker, filed an occupational disease claim (Form CA-2) alleging that he developed environmental psoriasis on his hands, feet, elbows and knees. The employing establishment noted that he had not stopped working. The

Office accepted appellant's claim for psoriasis of both hands on September 29, 2006 and psoriasis-related disorders to the feet, back and head on February 8, 2007.

On May 18, 2007 appellant filed a claim (Form CA-7) for a schedule award. In support of his claim, Dr. Mohammad Ismail and Dr. Robin D. Cole, both Board-certified internists, submitted an April 3, 2007 medical report alleging that appellant's plaque psoriasis of his hands, feet and neck, as well as generalized psoriatic arthritis, caused a Class 4, 70 percent whole person impairment, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition. They reported that appellant was unable to stand in one position for more than 15 minutes and had trouble wearing shoes due to lesions on his feet. Appellant also had sensitivity to cold temperatures and certain chemicals, preventing him from pumping gas into his vehicle. Drs. Ismail and Cole noted that, due to psoriatic arthritis, appellant had difficulty opening jars and was unable to bend over or squat. A physical examination revealed a generalized decreased range of motion of the neck, lower back, shoulders, wrists, hands, knees and ankles. Appellant's maximum medical improvement was listed as February 28, 2008.

In a letter dated May 29, 2007, the Office requested Drs. Ismail and Cole to provide additional information addressing any impairment to appellant's extremities, including any restriction of movement, decrease of strength, atrophy, ankylosis, sensory changes and subjective complaints of pain.

Appellant's medical records were sent to an Office medical consultant, Dr. James W. Dyer, a Board-certified orthopedic surgeon. In a medical report dated November 1, 2007, Dr. Dyer determined that the May 29, 2007 medical report rating a 70 percent whole person impairment could not be considered under the Federal Employees' Compensation Act. He advised that there was no objective evidence of arthritis of any joint. Citing to Example 8-18 in the A.M.A., *Guides*, Dr. Dyer also stated that impairment due to psoriatic arthritis requires a joint motion evaluation, which the May 29, 2007 report failed to include. He concluded that, based on the present medical evidence, appellant had no impairment.

By decision dated November 5, 2007, the Office denied appellant's claim, finding that appellant did not establish any permanent impairment to a scheduled member. On December 28, 2007 appellant filed a request for reconsideration.

In a November 15, 2007 medical report, Dr. Cole responded to the Office's request for an impairment rating. He calculated 50 percent right upper extremity impairment and 45 percent left upper extremity impairment, noting that his opinion was based on the A.M.A., *Guides*. A series of supplementing x-ray reports found osteophytic lipping on the right hand joints and hypertrophic changes in the left hand joints, as well as degenerative changes with osteoarthritis in both feet and osteophytic lipping with degenerative changes in the cervical spine. Additionally, degenerative changes throughout the lumbar spine with osteophytic lipping and disc space narrowing were revealed. Dr. Cole reported that appellant was unable to perform his

regular work activities and was limited in his daily living activities, intermittently confining him to his home.[1]

In a January 11, 2008 medical report, Dr. Dyer advised that Dr. Cole's evaluation was again insufficient to establish permanent impairment as he did not include a loss of motion evaluation in accordance with the tables in Chapter 16 and 17 of the A.M.A., *Guides*.[2]

The Office denied modification of its prior decision on January 17, 2008, finding that appellant did not establish that he sustained an impairment of his hands or feet due to work-related factors.

Appellant, through his representative, requested reconsideration on April 15, 2008. In an accompanying April 7, 2008 letter, the representative argued that appellant's injury was caused by a new coolant, which was no longer in use due to appellant's disability. Appellant also submitted several x-ray reports dated November 12, 2007 and a March 26, 2008 note from Dr. Ismail confirming that all of appellant's impairment evaluations were completed in accordance with the A.M.A., *Guides*.

The Office denied further merit review on May 19, 2008, finding that the submitted evidence was repetitive and cumulative.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act[3] and its implementing regulations[4] 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 loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5]

Before the A.M.A., *Guides* may be utilized the record must contain medical evidence describing the claimant's alleged permanent impairment. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation must include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent

[1] The Board notes that the report referred to an attached bilateral upper extremity evaluation. However, no such evaluation exists in the record.

[2] *See* A.M.A., *Guides* 436-37, 561-63 (5th ed. 2001).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id. See B.C.*, 58 ECAB ___ (Docket No. 06-925, issued October 13, 2006).

description of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[6]

ANALYSIS -- ISSUE 1

The issue is whether appellant established that he has any impairment of his upper or lower extremities. The Board finds that the medical reports submitted in support of appellant's claim are not sufficient to establish that he sustained any permanent impairment due to his accepted psoriasis condition. The Board notes that psoriasis is a disorder of the skin which is not listed as a scheduled member under the Act.[7] However, appellant may be entitled to a schedule award if he establishes impairment of his extremities due to this condition.

Appellant's attending physicians, Drs. Cole and Ismail, submitted medical reports addressing appellant's impairment to his extremities. However, neither physician provided sufficient detail to enable Dr. Dyer, the Office medical consultant, or the Board to visualize any permanent impairment.[8]

In the May 18, 2007 report, Drs. Cole and Ismail advised that appellant's plaque psoriasis and resulting arthritis limited his daily work and living activities, including standing, bending, squatting, opening jars and pumping gas. They reported that appellant suffered a generalized decreased range of motion. However, Drs. Cole and Ismail failed to specify any degrees of motion lost for the upper or lower extremities. In example 8-18, the A.M.A., *Guides*, in calculating impairment due to pustular psoriasis with psoriatic arthritis, combined the class of skin impairment with limitations of joint motion.[9] Drs. Cole and Ismail did not include range of motion limitations in their report and therefore failed to follow the A.M.A., *Guides* in calculating impairment due to appellant's psoriatic arthritis. Further, the report calculated impairment for a whole person. As correctly noted by Dr. Dyer, the Act does not provide for whole person impairments and therefore this calculation is irrelevant to appellant's impairment evaluation.[10]

The November 15, 2007 report also failed to sufficiently describe any impairment. While Dr. Cole included x-ray reports, demonstrating physical impairments to appellant's feet, hands and spine, she again failed to include specifications for loss of range of motion. The A.M.A., *Guides*' standards for evaluating the impairment of extremities are based primarily on loss of range of motion.[11] To this extent, it provides specific tables and figures exemplifying the types

---

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 1995). *See John H. Smith*, 41 ECAB 444, 448 (1990); *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

[7] *See* 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a).

[8] *See Joseph D. Lee*, 42 ECAB 172 (1990).

[9] A.M.A., *Guides* 185.

[10] *See Marilyn S. Freedland*, 57 ECAB 607 (2006); *Tommy R. Martin*, 56 ECAB 273 (2005).

[11] *See Tammy L. Meehan*, 53 ECAB 229 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

of tests and evaluations that may be performed to properly determine impairment.[12] However, Dr. Cole did not include any range of motion evaluations or address whether appellant sustained a loss of range of motion. He simply advised that appellant had a 45 percent left and 50 percent right upper extremity impairment without explaining how such ratings conform with the A.M.A., *Guides.* The Board notes that Dr. Cole did not include any estimate of impairment to appellant's lower extremities. Therefore, this report did not comply with the A.M.A., *Guides* and is of diminished probative value.[13]

Appellant has the burden of proof to establish that he sustained a permanent impairment to a scheduled member, entitling him to schedule award compensation. The Board finds that appellant did not meet his burden of proof, as the medical reports of record lack detail and conformance with the A.M.A., *Guides* and therefore do not support appellant's claim for a schedule award.[14]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[15] does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[16] The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[17]

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[18] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[19] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[20] When a claimant

[12] *See, e.g.,* A.M.A., *Guides* 516-17, p. 436-37.

[13] *Joseph D. Lee*, *supra* note 8.

[14] The Board notes that on appeal appellant submitted a copy of his personal medical records. Pursuant to 20 C.F.R. § 501.2(c), the Board is precluded from reviewing new evidence for the first time on appeal. However, appellant may resubmit evidence to the Office with a formal, written request for reconsideration under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

[15] 5 U.S.C. §§ 8101-8193.

[16] 5 U.S.C. § 8128(a).

[17] *Annette Louise*, 54 ECAB 783, 789-90 (2003).

[18] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[19] 20 C.F.R. § 10.606(b)(2).

[20] 20 C.F.R. § 10.607(a).

fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[21]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[22] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[23]

ANALYSIS -- ISSUE 2

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent new evidence not previously considered by the Office.

In an April 7, 2008 letter, appellant's representative argued that appellant's disability was caused by an improper change in coolant, which has since been rectified. The Office previously accepted that appellant's injury was caused by his employment. Moreover, statements regarding the cause of appellant's disability are not relevant to the medical question of whether appellant sustained a compensable impairment to a scheduled member. Therefore, this letter does not constitute a basis for reopening appellant's claim.[24]

Further, the evidence appellant submitted on reconsideration consisted of November 12, 2007 x-ray reports and a March 26, 2008 note from Dr. Ismail. The x-ray reports already existed in the record and constitute duplicative evidence. Further, Dr. Ismail's note states that appellant's evaluations were conducted according to the A.M.A., *Guides*, which the April 3 and November 15, 2007 medical reports previously noted. Therefore, this report is repetitive of evidence existing in the record. The Board has held that newly submitted evidence which is only repetitive or duplicative of evidence existing in the record is not sufficient to warrant further merit review.[25]

Because appellant only submitted duplicative, irrelevant and repetitive evidence with his request for reconsideration, the Board finds that the Office was correct in denying merit review.

[21] 20 C.F.R. § 10.608(b).

[22] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[23] *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[24] *See David J. McDonald*, 50 ECAB 185 (1990).

[25] *See Eugene F. Butler*, *supra* note 22.

CONCLUSION

Appellant did not meet his burden of proof to establish that he is entitled to schedule award compensation due to his employment injury. Further, the Office properly denied his request for further merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 19 and January 17, 2008 and November 5, 2007 are affirmed.

Issued: March 16, 2009
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