U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYDIA S. DIAZ and DEPARTMENT OF THE NAVY, NAVAL EDUCATION & TRAINING, Pensacola, Fla.

Docket No. 96-2444; Submitted on the Record;
Issued August 11, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for consideration of the merits on May 15, 1996.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for a schedule award.

Appellant filed a claim on December 14, 1994 alleging on December 13, 1994 she sustained trauma to her left ribs in the performance of duty. The Office accepted appellant's claim for chest wall sprain. On August 5, 1995 appellant requested a schedule award. By decision dated January 31, 1996, the Office denied appellant's claim finding that she had not submitted medical evidence establishing permanent impairment to a scheduled member resulting from her accepted employment injury.

Section 8107 of the Federal Employees' Compensation Act[1] provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guide to the Evaluation of Permanent Impairment*[2] as a standard for evaluating schedule losses and the Board has concurred in such adoption.[3]

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[1] 5 U.S.C. §§ 8101-8193, 8107.

[2] A.M.A., *Guides* (4th ed. 1993).

[3] *A. George Lampo,* 45 ECAB 441, 443 (1994).

In support of her claim for a schedule award, appellant submitted a report dated December 8, 1995 from Dr. Abimeal Perez, a Board-certified family practitioner, noting appellant's history of injury to include injuries to the cervical spine, right elbow and right ribs. He found that appellant had a two percent impairment of her cervical spine and one percent impairment of her elbow due to loss of range of motion. Dr. Perez concluded that appellant had three percent permanent impairment to the whole person. The District medical adviser reviewed Dr. Perez's report and concluded that appellant had no impairment rating to an accepted member.

Dr. Perez found that appellant had permanent impairment of her cervical spine. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.[4]

Dr. Perez also found that appellant had a permanent impairment of the elbow. Although the upper extremity is specified in the Act as a scheduled member, the only condition accepted as a result of the December 13, 1994 employment injury is chest wall sprain. As the Office has not accepted that appellant sustained an injury to her elbow as a result of her accepted employment injury, she is not entitled to a schedule award for any impairment to her elbow. Dr. Perez did not attribute any permanent impairment to her accepted condition of chest wall sprain. The medical evidence does not establish that appellant sustained a permanent impairment due to her accepted employment injury of chest wall sprain and the Office, therefore, properly denied appellant's request for a schedule award.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on May 15, 1996.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[5] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.[6]

In this case, appellant requested reconsideration and alleged that she had sustained injuries to her cervical spine and right elbow as a result of her December 13, 1994 employment injury. In support of her claim, appellant submitted medical records pertaining to her claim for a lumbosacral injury resulting from a December 9, 1991 employment injury. As these records are not relevant to the issue of whether appellant sustained cervical or upper extremity injuries as a

[4] *George E. Williams*, 44 ECAB 530, 533 (1993).

[5] 20 C.F.R. § 10.138(b)(1).

[6] 20 C.F.R. § 10.138(b)(2).

result of her December 13, 1994 employment injury the reports are not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant resubmitted Dr. Perez's December 8, 1995 report addressing permanent impairment and a form report dated December 16, 1994 noting her history of injury and noting pain and tenderness of the cervical spine. Appellant also submitted a report dated February 14, 1996 from Dr. Perez diagnosing injury of the cervical spine, right elbow and left ribs and listing the date of injury as December 13, 1994. This report merely restates Dr. Perez's December 8, 1995 report attributing appellant's cervical and arm conditions to her accepted employment injury without providing any rationale in support of this connection. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[7]

Appellant also submitted a form report dated December 14, 1994 noting her complaints regarding her right rib cage, cervical spine and arm. This unsigned report diagnosed cervical strain and contusion to the left rib cage. A report which is not signed by a physician has no probative value[8] and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

As appellant has not submitted relevant new evidence not previously considered by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.[9]

[7] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

[8] *Merton J. Sills*, 39 ECAB 572 (1988).

[9] Following the Office's May 15, 1996 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated May 15 and January 31, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 11, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member