United States Department of Labor
Employees' Compensation Appeals Board

RICHARD ORTIZ, Appellant	)	
and	)	**Docket No. 05-1816**
	)	**Issued: December 20, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Texas City, TX, Employer	)	

Appearances:
Richard Ortiz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 1, 2005 appellant filed a timely appeal of Office of Workers' Compensation Programs' decisions dated May 17 and August 9, 2005. Pursuant to 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 has more than a 14 percent permanent impairment to his right leg, for which he received a schedule award; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 1, 2002 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in a slip and fall at work on June 29, 2002. The Office accepted the claim for a trimalleolar fracture of the right ankle. Appellant returned to work in a light-duty position on January 11, 2003.

In a report dated December 9, 2003, Dr. Cesar Sevilla, an attending orthopedic surgeon, provided a history and results on examination. With respect to permanent impairment, Dr. Sevilla indicated that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* appellant had an eight percent impairment due to a two-centimeter calf muscle atrophy. Dr. Sevilla also found the following impairments for loss of ankle range of motion: 7 percent based on 10 degrees of extension, 0 percent for 40 degrees plantar flexion, 5 percent based on 6 degrees of inversion and 2 percent as a result of 4 degrees of eversion. Dr. Sevilla combined the muscle atrophy and loss of range of motion for a 21 percent leg impairment. Dr. Sevilla opined that appellant had reached maximum medical improvement.

In a report dated December 28, 2004, an Office medical adviser reviewed the evidence and found that appellant had a 14 percent leg impairment for loss of range of motion. The medical adviser indicated that under the A.M.A., *Guides* impairments for atrophy and loss of range of motion may not be combined.

By decision dated May 17, 2005, the Office issued a schedule award for a 14 percent impairment to the right leg. The period of the award was 40.32 weeks from December 9, 2003.

On June 10, 2005 appellant requested reconsideration of his claim. He stated that he disagreed with the medical advisers' opinion and requested an explanation as to how the dates of the award were calculated.

By decision dated August 9, 2005, the Office denied the request for reconsideration without reviewing the merits of the claim. The Office noted that appellant did not submit any new and relevant medical evidence.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulations,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3] As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

[3] *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[4] FECA Bulletin No. 01-05 (issued January 29, 2001).

ANALYSIS -- ISSUE 1

Dr. Sevilla found that appellant had a 21 percent permanent impairment to the right leg based on muscle atrophy and loss of ankle range of motion. The A.M.A., *Guides*, however, do not permit the combined use of certain evaluation methods. Under the cross-usage chart at Table 17-2, muscle atrophy and range of motion evaluation methods are not to be used together.[5] In other words, the evaluator must choose either muscle atrophy or loss of range of motion as the appropriate evaluation method. In this case, the Office medical adviser used loss of range of motion, as this would result in a greater impairment than muscle atrophy alone.

Dr. Sevilla reported 10 degrees of ankle extension under Table 17-11, this is a seven percent leg impairment.[6] For hindfoot inversion, six degrees results in a five percent leg impairment under Table 17-12.[7] In addition, four degrees of eversion is a mild impairment of two percent for the leg under the same table. Combining 7, 5 and 2 results in a 14 percent impairment to the right leg. The Board finds no probative medical evidence establishing a greater impairment in this case.

Appellant inquired as to the dates used by the Office for the schedule award. The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). The maximum number of weeks for total loss of use of the leg is 288 weeks, and therefore appellant is entitled to 14 percent of the maximum, or 40.32 weeks.[8] It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[9] Dr. Sevilla indicated that appellant had reached maximum medical improvement in his December 9, 2003 report, and therefore the award begins on this date.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

[5] A.M.A., *Guides* 526, Table 17-2.

[6] *Id.* at 537, Table 17-11.

[7] *Id.* at Table 17-12.

[8] 5 U.S.C. § 8107(c)(1).

[9] *Albert Valverde*, 36 ECAB 233, 237 (1984).

Under 20 C.F.R. § 10.606(b)(2), 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 new evidence not previously considered by the Office. Section 10.608(b) 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 reviewing the merits of the claim. 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.[10]

ANALYSIS -- ISSUE 2

The underlying issue with respect to the schedule award is a medical issue. Appellant did not submit any new and relevant medical evidence regarding the degree of permanent impairment. He stated that he disagreed with the Office decision, but he did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Since appellant did not meet any of the requirements of section 10.606(b)(2), he was not entitled to a merit review of the claim.

CONCLUSION

The Board finds that the record does not establish more than a 14 percent permanent impairment to the right leg, for which appellant received a schedule award on May 17, 2005. The Board further finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

[10] *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 9 and May 17, 2005 are affirmed.

Issued: December 20, 2005
Washington, DC

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

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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