United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 08-96**
	)	**Issued: July 8, 2008**
U.S. POSTAL SERVICE, RALPH MCGILL CARRIER FACILITY, Atlanta, GA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 10, 2007 appellant filed a timely appeal from a May 2, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for a schedule award and a July 3, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the July 3, 2007 nonmerit decision.

ISSUES

The issues are: (1) whether the Office properly denied appellant's request for a schedule award; and (2) whether it properly denied her request for merit review under 5 U.S.C. § 8128.

FACTUAL HISTORY

On December 5, 1997 appellant, then a 46-year-old city letter carrier, filed a traumatic injury claim alleging that on that date she sustained a swollen right knee in a motor vehicle accident. The Office accepted her claim for a left shoulder dislocation, lumbar strain and a

contusion of the right knee. Appellant stopped work on December 5, 1997 and returned to limited-duty employment on February 17, 1998.[1]

By decision dated March 28, 2001, the Office denied appellant's claim for a schedule award for the right knee. On May 3, 2001 it granted her a schedule award for a three percent permanent impairment of the left shoulder. By decision dated June 25, 2001, the Office found that appellant was not entitled to a schedule award for a right hip impairment.[2]

Appellant stopped work in February 2002 and received compensation from the Office beginning March 9, 2002. On January 2, 2004 she elected retirement in lieu of workers' compensation benefits. By decision dated June 27, 2005, the Office terminated appellant's entitlement to medical benefits effective July 9, 2005 on the grounds that she had no need for further medical treatment.[3]

On December 26, 2006 appellant requested a schedule award.[4] By letter dated January 22, 2007, the Office asked her to identify the part of the body she believed had sustained a permanent impairment. It advised appellant to submit medical evidence from her physician showing that she had reached maximum medical improvement and providing an impairment evaluation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

Appellant submitted a December 13, 2003 functional capacity evaluation from a physical therapist and a medical report dated August 1, 2003 from Dr. Courtney D. Shelton, a Board-certified internist, discharging her from physical therapy. She also submitted a copy of a January 6, 2004 report from Dr. Jeffrey Fried, a Board-certified orthopedic surgeon and Office referral physician, who addressed the nature and extent of appellant's accepted employment injuries. Dr. Fried diagnosed bilateral carpal tunnel syndrome, left acromioclavicular joint separation, a history of a right knee contusion and lumbar strain and disc bulge. He found that appellant could work full time with restrictions.

By decision dated May 2, 2007, the Office denied appellant's claim for a schedule award. It found that she had not submitted any evidence supporting that she had a permanent impairment of a member or function of the body.

On May 25, 2007 appellant requested reconsideration. She claimed a schedule award as a result of her accepted right knee and right lower leg condition, lumbar sprain and left shoulder dislocation. Appellant asserted that the medical evidence showed that she reached maximum

[1] On January 21, 1999 the Office determined that appellant's actual earnings as a modified carrier fairly and reasonably represented her wage-earning capacity. It found that she had no loss of wage-earning capacity.

[2] The Office accepted that appellant sustained bilateral carpal tunnel syndrome under file number 062020924. Appellant received a schedule award for a 10 percent left upper extremity impairment and a 10 percent right upper extremity impairment.

[3] The Office indicated that it was also terminating appellant's compensation for total disability; however, she was not receiving wage-loss compensation at the time of the Office's termination.

[4] Appellant noted that she had previously requested a schedule award on July 6, 2003.

medical improvement in 2003. She submitted physical therapy reports dated March and April 2003.

In a decision dated July 3, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and thus insufficient to warrant reopening the case for merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act,[5] and its implementing federal regulations,[6] 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.[7] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[8]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions 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 resulting restrictions and limitations.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left shoulder dislocation, lumbar strain and a contusion of the right knee due to a December 5, 1997 motor vehicle accident. In a decision dated May 3, 2001, it granted her a schedule award for a three percent permanent impairment of the left shoulder.[10]

On December 26, 2006 appellant filed a claim for a schedule award. The Office requested that she specify the member or function of the body she believed was permanently

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] 20 C.F.R. § 10.404(a).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[9] *Peter C. Belkind*, 56 ECAB 580 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

[10] By decisions dated March 28 and June 25, 2001, the Office found that appellant was not entitled to a schedule award for a permanent impairment of either the right knee or hip.

impaired. It further advised appellant to obtain an impairment evaluation from her attending physician in accordance with the provisions of the A.M.A., *Guides*. Appellant submitted a December 13, 2003 functional capacity evaluation from a physical therapist. A physical therapist is not a "physician" within the meaning of section 8101(2) of the Act and cannot render a medical opinion.[11] Further, the physical therapist did not provide sufficient findings such that a determination of the extent of any permanent impairment could be made in accordance with the provisions of the A.M.A., *Guides*.

Appellant also submitted an August 1, 2003 report from Dr. Shelton discharging her from physical therapy. On January 6, 2004 Dr. Fried found that appellant could perform limited-duty employment for eight hours per day. Neither Dr. Shelton nor Dr. Fried, however, addressed the issue of whether appellant sustained any impairment to a scheduled member or function of the body as a result of the December 5, 1997 work injury. Office procedures and the Board precedent require that the record contain a medical report with a detailed description of the impairment.[12] 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 resulting restrictions and limitations.[13]

Appellant has the burden of proof to submit medical evidence supporting that she has a permanent impairment of a scheduled member or function of the body.[14] As such evidence has not been submitted, the Office properly denied her request for a schedule award.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[15] the Office's regulations provide that 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.[16] 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.[17] When a claimant fails to meet one of the above

[11] 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000).

[12] *See Peter C. Belkind*, *supra* note 9; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (August 2002).

[13] *See Vanessa Young*, *supra* note 9; *Robert B. Rozelle*, 44 ECAB 615 (1993).

[14] *See Annette M. Dent*, 44 ECAB 403 (1993).

[15] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

[16] 20 C.F.R. § 10.606(b)(2).

[17] 20 C.F.R. § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[18]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[19] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[20] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[21]

ANALYSIS -- ISSUE 2

By decision dated May 2, 2007, the Office denied appellant's claim for a schedule award. On May 25, 2007 appellant requested reconsideration. She specified that she was claiming a schedule award for an impairment of the right lower extremity, lumbar spine and left shoulder. The Board notes that the Act specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.[22] Appellant also maintained that medical evidence from 2003 showed that she had reached maximum medical improvement. The relevant issue, however, is whether she has submitted medical evidence showing that she has a permanent impairment under the A.M.A., *Guides*. Evidence or argument that does not address the particular issue involved does not warrant reopening a case for merit review.[23]

Appellant submitted physical therapy reports dated from March to April 2003. The April 11 and 25, 2003 physical therapy reports duplicated evidence already contained in the case record. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[24] The remaining physical therapy reports are not relevant to the pertinent issue of whether appellant is entitled to a schedule award for a permanent impairment of a scheduled member. As noted, evidence which is not relevant to the issue at hand does not constitute a basis for reopening a claim.[25]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new

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[18] 20 C.F.R. § 10.608(b).

[19] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[20] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[21] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[22] *Francesco C. Veneziani*, 48 ECAB 572 (1997). A schedule award is payable for a permanent impairment of the extremities that is due to a work-related back condition; *see Denise D. Cason*, 48 ECAB 530 (1997).

[23] *Freddie Mosley*, 54 ECAB 255 (2002).

[24] *Richard Yadron*, 57 ECAB 207 (2005).

[25] *Betty A. Butler*, 56 ECAB 545 (2005).

and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a schedule award. The Board further finds that the Office properly denied her request for merit review under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 3 and May 2, 2007 are affirmed.

Issued: July 8, 2008
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