United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 10-2270**
	)	**Issued: June 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Worcester, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2010 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 22 and August 12, 2010. Pursuant to the Federal Employees' Compensation Act[1] and 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 sustained any permanent impairment to her upper extremities causally related to her accepted cervical strain and cervical subluxation conditions; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 38-year-old letter carrier, sustained an injury to her neck, upper back and both shoulders when her postal vehicle was struck from behind by another vehicle. She filed a claim for benefits, which the Office accepted for cervical strain and cervical subluxation.

On March 9, 2010 appellant filed a Form CA-7 claim for a schedule award.

By letter dated March 26, 2010, the Office asked appellant to provide a medical report and impairment evaluation from her attending physician pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition). Appellant did not submit any additional medical evidence.

By decision dated June 22, 2010, the Office found that appellant had no ratable impairment causally related to an accepted condition and therefore was not entitled to a schedule award.

On July 15, 2010 appellant requested reconsideration of the June 22, 2010 schedule award decision. She asserted that she had requested her treating physician to send a form report including an impairment evaluation; however, her physician failed to submit these forms in a timely fashion.

Appellant submitted a May 13, 2010 impairment worksheet from Dr. Deborah Ford, a specialist in internal medicine, which the Office received on July 19, 2010. Dr. Ford related appellant's complaints of upper extremity pain and stated findings on examination. She attributed appellant's chronic upper extremity pain to repetitive motion activity. Dr. Ford did not, however, provide an impairment rating under the A.M.A., *Guides*.

In a May 15, 2010 report, received by the Office on July 19, 2010, Dr. Ford stated that appellant continued to experience chronic cervical pain stemming from her October 1991 employment injury, with pain in her neck, shoulder and both upper and lower back areas limiting her activities of daily living including her ability to perform her usual job at work. She advised that the intensity of her discomfort varied with the type of activity she was required to perform. Dr. Ford asserted that appellant had achieved maximal improvement although it was difficult to state the exact date this occurred. She stated on examination that appellant had diminished mobility of her cervical paraspinal muscles, rhomboid muscles and shoulder girdles. Dr. Ford stated that "permanent impairment" was not a "medical classification." She declined to provide an impairment rating based on percentage of impairment under the A.M.A., *Guides*.

By decision dated August 12, 2010, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act[2] and its implementing regulations[3] 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.[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

In the instant case, the Office accepted conditions of cervical strain and cervical subluxation. Appellant subsequently filed a claim for a schedule award. The Office asked her to submit a medical report and impairment evaluation rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides* from her treating physician in support of her claim. However, appellant did not provide the medical evidence requested. She submitted no medical evidence indicating that she had any permanent impairment causally related to her accepted cervical strain and cervical subluxation conditions. The Board will affirm the June 22, 2010 decision.

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 considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.[6] 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.[7]

ANALYSIS -- ISSUE 2

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

[4] *Id.*

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

[6] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[7] *Howard A. Williams*, 45 ECAB 853 (1994).

Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office.

The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[8] Dr. Ford's May 13, 2010 impairment worksheet and May 15, 2010 report did not contain any medical findings which could be correlated to a permanent impairment, compensable under the A.M.A., *Guides*. The Board has explained that whether a medical report actually applies the A.M.A., *Guides* in evaluating permanent impairment goes to the weight of the evidence, and therefore the only inquiry is whether the report provides relevant, pertinent and new evidence pertaining to the degree of permanent impairment.[9] Dr. Ford's reports submitted in support of the reconsideration request provided no new evidence from which any degree of permanent impairment could be discerned. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.[10]

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment causally related to her accepted cervical strain and cervical subluxation conditions. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

[8] *See David J. McDonald*, 50 ECAB 185 (1998).

[9] *Billy B. Scoles*, 57 ECAB 258 (2005).

[10] Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.605 through 10.607.

ORDER

IT IS HEREBY ORDERED THAT the August 12 and June 22, 2010 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board