

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VOISY L. MYNATT and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

*Docket No. 01-673; Submitted on the Record;
Issued April 22, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

In this case, the Office accepted appellant's injuries for bilateral carpal tunnel syndrome with right release performed on October 12, 1992 and left release performed on July 14, 1993. In a decision dated June 27, 1995, the Office granted appellant a schedule award for 10 percent impairment of his right upper extremity and 10 percent of the left upper extremity.

By letter dated July 18, 1995, appellant, through counsel, requested an oral hearing regarding the Office's schedule award determinations.

By decision dated December 15, 1995, the Office hearing representative remanded the case to determine that degree of appellant's right upper extremity impairment in light of his preexisting, nonwork-related right shoulder surgery, which the Office did not consider in its impairment determination.

By decision dated January 31, 1996, the Office denied modification of its June 27, 1995 decision on the grounds that appellant's right shoulder surgery was not work related and that appellant's treating physician failed to support an impairment greater than 10 percent of the right upper extremity. By letter dated February 19, 1996, appellant, through counsel, again requested an oral hearing. By decision dated April 8, 1996, the hearing representative vacated the January 31, 1996 decision and referred the case to the claims examiner "to pay an additional nine percent award for the impairment of the right upper extremity as a result of the right carpal tunnel surgery and to include the nonwork-related impairment of the right shoulder surgery." By decision dated September 18, 1996, the Office again denied an increase in appellant's right upper extremity. He requested reconsideration on January 3, 1997. By decision dated April 7, 1997, the Office vacated its September 18, 1996 decision and referred the case to a claims examiner to pay an additional nine percent award for impairment of the right upper extremity.

By decision dated May 14, 1997, the Office awarded appellant 9 percent additional impairment to the right arm for a total of 19 percent impairment.

Appellant subsequently appealed to the Board.

In a decision dated November 13, 1998, the Board found that appellant had a total of 25 percent impairment of his right upper extremity. The Board modified the Office's decision.¹

By decision dated February 24, 1999, the Office denied modification of appellant's request for reconsideration of the Office's decision denying an increase in his left upper extremity schedule award of 10 percent.

By decision dated February 25, 1999, the Office granted appellant a schedule award for 6 percent impairment of the right upper extremity, for a total of 25 percent. The Office noted:

“[B]ased on the November 13, 1998 decision of the Board, [appellant is] entitled to a total impairment rating of 25 percent for the right upper extremity. Since we have previously paid schedule award benefits representing 19 percent [impairment] on the right upper extremity, this additional award of 6 percent of the right upper extremity represents the remaining benefits due.”

By letter dated March 26, 1999, appellant, through counsel, requested reconsideration of the Office's February 25, 1999 schedule award. Appellant argued that the Office erred in not awarding appellant an additional eight percent impairment in addition to the six percent awarded in the February 25, 1999 decision. He noted the Board's decision wherein it stated that appellant was entitled to an award for an additional 14 percent for impairment of his right upper extremity.

By decision dated April 9, 1999, the Office denied modification of appellant's request for reconsideration. The Office noted that the Board found no more than 25 percent for his right upper extremity, and that since appellant had been awarded a 19 percent impairment rating, he was only entitled to an additional 6 percent impairment. The Office noted that the Board's reference to a 14 percent increase for the right upper extremity in its decision was “an obvious typographical error.”

By letter dated January 12, 2000, appellant, through counsel, requested reconsideration of the Office's February 24, 1999 decision concerning appellant's left upper extremity. He argued that if the Office would increase appellant's award to his “left upper extremity to 25 percent, this matter would end.”²

¹ Docket No. 97-2326.

² Appellant's letter is not clear. He notes that the April 9, 1999 decision “upheld the prior decision of February 24, 1999.” In fact, that decision upheld the Office's February 25, 1999 decision which denied modification of its prior award increasing appellant's right upper extremity by six percent. Appellant also stated that he thought the Office would issue a decision on the left upper extremity. The Office, in its February 24, 1999 decision, addressed appellant's left upper extremity.

By decision dated November 2, 2000, the Office found that appellant's reconsideration included the Office's April 9, 1999 decision concerning the 25 percent right upper extremity rating and the February 24, 1999 decision concerning the 10 percent left upper extremity rating. The Office conducted a limited review of the file and denied appellant's request for reconsideration.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation 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.³"

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.⁴ 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.⁵ 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.⁶ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁷

Appellant's January 12, 2000 request for reconsideration argued that because the Board had increased appellant's right upper extremity impairment award to 25 percent, that the "Appeals Board ... would likewise increase the left upper extremity to 25 percent." The Office found appellant failed to submit new or relevant medical evidence to support any increase in the left upper extremity impairment rating and denied the request for reconsideration. The Board notes that appellant presented no medical evidence to support the contention that the Office should have increased appellant's right upper extremity impairment rating by an additional eight percent, nor did he present any evidence to support his argument that the left upper extremity should have been increased by the same percentage as the right upper extremity. Appellant did

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

⁶ *David J. McDonald*, 50 ECAB 185 (1998).

⁷ *Id.*

not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Further, appellant did not present any relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated November 2, 2000 is affirmed.

Dated, Washington, DC
April 22, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member