

**United States Department of Labor
Employees' Compensation Appeals Board**

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 07-1474
Issued: October 22, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 9, 2007 appellant filed a timely appeal of a January 10, 2007 decision of the Office of Workers' Compensation Programs, denying merit review of his claim. Since more than one year has elapsed between the last merit decision on November 9, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2) and 501.6(c) and (d).

ISSUE

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to his federal employment as a sorting machine operator. By decision dated November 9,

2005, the Office issued a schedule award for a four percent permanent impairment to each upper extremity. The period of the award was 24.96 weeks from June 7, 2004.

By letter dated November 6, 2006, appellant requested reconsideration of his claim. He inquired as to why the impairment rating from the Office medical adviser was different from that of his attending orthopedic surgeon, Dr. Sarmed Elias. Appellant argued that the medical adviser stated that there was no impairment for loss of range of motion in the absence of chronic pain, while Dr. Elias found an impairment for loss of range of motion. He also noted that the effective pay rate date was reported as February 14, 2003, when he had surgery, but he had surgeries going back to May 2000 and appellant inquired as to why that period was not covered.

With respect to the medical evidence, appellant submitted reports from Dr. Elias dated August 15, 2003, November 2 and 18, 2004 and a February 1, 2005 report that were previously of record. He also submitted a June 21, 2005 report from Dr. Elias that was not previously submitted. Dr. Elias provided results on examination but did not provide any opinion as to permanent impairment. Appellant also submitted a settlement agreement dated March 11, 2005, with respect to an Equal Employment Opportunity Commission complaint that had previously been submitted.

By decision dated January 10, 2007, the Office determined that the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.²

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the

¹ 20 C.F.R. § 10.605 (1999).

² *Id.* at § 10.606(b)(2).

request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

In the November 6, 2006 application for reconsideration, appellant raised questions as to how the schedule award was calculated. As noted above, to reopen his claim for review of the merits, he must 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. To the extent appellant argues that the November 9, 2005 schedule award decision was not properly calculated, he does provide a supporting legal argument.⁴ Appellant noted, for example, the lack of an impairment for loss of range of motion. In this case, the Office medical adviser had properly noted that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) for compression neuropathies, additional impairment values for loss of motion are not given in the absence of a chronic regional pain syndrome.⁵ Appellant also referred to the pay rate date and the period covered, without providing a relevant legal argument or discussing a specific point of law.⁶

Appellant did not submit any relevant and pertinent evidence not previously submitted. The degree of permanent impairment is based on application of the A.M.A., *Guides* to the relevant medical evidence. The new medical evidence submitted was a June 21, 2005 report from Dr. Elias, who did not discuss the A.M.A., *Guides* or provide any new and relevant information on the issue presented.⁷ The record does not contain any new and relevant evidence on reconsideration with respect to the underlying medical issue in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 relevant and pertinent new evidence not previously considered by the Office. Pursuant to 20 C.F.R. § 10.608, the Office properly determined the application for reconsideration was insufficient to warrant review of the merits of the claim.

³ *Id.* at § 10.608.

⁴ Where the legal argument presented has no reasonable color of validity, the Office is not required to reopen the case for merit review; *see Norman W. Hanson*, 40 ECAB 1160 (1989).

⁵ A.M.A., *Guides* 494 (5th ed. 2001).

⁶ The effective pay rate date is based on the provisions of 5 U.S.C. § 8101(4), which establishes monthly pay is determined at the time of injury, the time disability begins, or the date recurrence begins if more than six months after the employee returns to regular full-time work with the United States. The period covered by a schedule award begins with the date of maximum medical improvement and runs for the number of weeks as determined by 5 U.S.C. § 8107(c). *See Albert Valverde*, 36 ECAB 233, 237 (1984).

⁷ Appellant had previously submitted a more current report from Dr. Elias, dated July 12, 2005, that was used by the Office medical adviser to determine upper extremity permanent impairment.

CONCLUSION

Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly denied the application for reconsideration without review of the merits of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2007 is affirmed.

Issued: October 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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