

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

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**R.R., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
WEAPONS STATION, Colts Neck, NJ,  
Employer**

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**Docket No. 07-1480  
Issued: October 19, 2007**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 9, 2007 appellant filed a timely appeal from a December 6, 2006 decision of the Office of Workers' Compensation Programs denying his request for reconsideration. The Board's jurisdiction to consider final decisions of the Office extends only to final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the last merit decision dated April 21, 2006 which denied appellant's claim for more than a 14 percent impairment of his left upper extremity.<sup>2</sup>

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<sup>1</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>2</sup> See *Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley*, 41 ECAB 104 (1989).

## **ISSUE**

The issue is whether the Office abused its discretion in denying appellant's request for reconsideration.

## **FACTUAL HISTORY**

On March 16, 2001 appellant, then a 61-year-old machinist, sustained a crush injury and open fracture of the left thumb while in the performance of duty. On January 25, 2002 he filed a claim for a schedule award.

By decision dated January 6, 2004, the Office granted appellant a schedule award based on a 13 percent impairment of the left upper extremity. On May 26, 2005 the Office granted appellant a schedule award for an additional one percent impairment.<sup>3</sup> On April 21, 2006 the Office affirmed the May 26, 2005 decision.

On November 2, 2006 appellant requested reconsideration and submitted additional evidence. In a March 30, 2006 report, Dr. David Weiss stated that his opinion, previously expressed in a report that he submitted to the Office, that appellant had a 36 percent impairment of the left upper extremity, remained unchanged. He also contended that he had impairment due to loss of grip strength which was not included in the Office's determination of his impairment. Dr. Weiss indicated his disagreement with reports from two other physicians. These reports were previously considered by the Office and deemed to be correct in calculating appellant's left upper extremity impairment.

By decision dated December 6, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant further merit review of his claim.

## **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>4</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

"The Secretary of Labor may review an award for or against payment of compensation at any time on [her] 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."

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<sup>3</sup> Appellant's schedule awards were based on sensory deficit and range of motion deficit of his fingers.

<sup>4</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>6</sup>

### **ANALYSIS**

Dr. Weiss stated that he had not changed his original opinion regarding a 36 percent impairment rating for appellant's left upper extremity which he submitted to the Office. He also contended that the Office should have included impairment due to loss of grip strength in its determination of appellant's impairment. Dr. Weiss indicated that his disagreement with medical reports which were previously considered by the Office. The Board finds that the report from Dr. Weiss does not constitute relevant and pertinent evidence not previously considered by the Office as his report is merely a reiteration of his previous report submitted to the Office. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or constitute relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 6, 2006 is affirmed.

Issued: October 19, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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