

On January 13, 1993 appellant, then a 44-year-old distribution clerk, filed an occupational disease claim alleging factors of his employment caused a bilateral upper extremities condition. He did not stop work. The Office accepted appellant's claim for bilateral

carpal tunnel syndrome, ulnar lesion and ulnar nerve entrapment in both elbows. Appellant returned to work intermittently; however, he stopped work on October 28, 2005. He was placed on the periodic rolls and received appropriate compensation.¹ On July 30, 1997 the Office granted appellant schedule awards for 10 percent impairment of the left upper extremity and 10 percent impairment of the right upper extremity. The awards covered a period of 62.40 weeks from October 12, 1996 to December 11, 1997.

On July 22, 2003 appellant filed a claim for an additional schedule award.

By decision dated May 18, 2006, the Office denied appellant's claim for an increased schedule award, as the medical evidence did not support any increased impairment. On June 5, 2006 appellant requested a hearing, which was held on March 15, 2007.

By decision dated May 23, 2007, an Office hearing representative affirmed the May 18, 2006 decision.

On May 16, 2008 the Office received a copy of a letter, addressed to Dr. David C. Lee, a Board-certified neurosurgeon, from appellant's representative, requesting an updated impairment rating.

By letter dated May 22, 2008, appellant's representative requested reconsideration. He contended that appellant had provided sufficient medical evidence to support an increased impairment rating. Counsel stated that appellant had "visited with another competent, well-trained, and highly qualified physician in Hattiesburg, Mississippi, who had rendered another opinion regarding his impairment." However, no additional medical evidence was received.

By decision dated June 2, 2008, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

"(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

¹ On May 19, 1997 the Office determined that appellant was reemployed as a modified mail handler with wages of \$719.45 per week, effective October 12, 1996. It found that the position fairly and reasonably represented his wage-earning capacity.

² 5 U.S.C. § 8128(a).

“(ii) Advances a relevant legal argument not previously considered by the Office;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered
by the [the Office].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant’s representative disagreed with the denial of appellant’s claim for an increased schedule award and requested reconsideration on May 22, 2008. He provided a copy of a letter addressed to Dr. Lee, which requested an updated impairment rating. Appellant’s representative noted that appellant disagreed with his impairment rating; however, despite indicating that appellant had visited with another physician, he did not submit any updated impairment rating. This is essential as the underlying issue is medical in nature. The Board finds that appellant did not submit any pertinent new and relevant evidence in support of his request for reconsideration.

Furthermore, appellant did not advance a relevant legal argument not previously considered by the Office or demonstrate that the Office erroneously applied or interpreted a specific point of law. Thus, the Office properly declined to reopen the case on the merits as he did not meet the criteria for a merit review.⁵

CONCLUSION

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).⁶

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

⁵ *Id.* at § 10.606(b)(2)(i-iii).

⁶ The Board notes that, subsequent to the Office’s June 2, 2008 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2008 is affirmed.

Issued: May 11, 2009
Washington, DC

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

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

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