



mild carpal tunnel entrapment of the median nerve right more than left. Appellant was treated by Dr. Curtis A. Crimmins, a Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome and on October 30, 1998, performed a left median nerve decompression and a right median nerve decompression on September 25, 1998.

In March 2003, appellant requested a schedule award. She submitted a report from Dr. Trinh G. Truong, a Board-certified orthopedist, dated September 16, 2002, who opined that appellant sustained a 39 percent impairment of the right and left upper extremities due to her work-related condition. On March 22, 2003 an Office medical adviser stated that he reviewed the medical report from Dr. Truong and opined that based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had 28 percent permanent impairment to both the right and left upper extremities.

In an April 7, 2003 decision, the Office granted appellant a schedule award for 28 percent impairment of both the right and left upper extremities. The period of the award was from October 8, 2002 to February 12, 2006.

On August 24, 2006 appellant requested an additional schedule award. She submitted reports from Dr. Truong dated March 31, 2003 to April 19, 2007, who treated her for tenderness over the lumbar spine and diagnosed fibromyalgia with nerve irritation at the wrists and right shoulder tendinitis and recommended steroid injections, acupuncture and aquatic therapy. In a May 4, 2007 report, Dr. Jennifer Griffiths, a Board-certified family practitioner, opined that appellant had 80 percent impairment of the bilateral upper extremities.

On June 18, 2007 an Office medical adviser stated that he reviewed the medical report from Dr. Griffiths and found that, based on the A.M.A., *Guides*, appellant did not have greater than the 28 percent permanent impairment previously awarded for the right and left upper extremities.

In a decision dated August 13, 2007, the Office denied appellant's claim for an additional schedule award.

On March 4, 2008 appellant requested reconsideration. She submitted a November 30, 2007 report from Dr. Griffiths who treated her for severe neurologic disabilities since 1997. Appellant diagnosed chronic pain, nerve injury, obesity, skin rashes, constipation and hemorrhoids due to her immobility. In reports dated May 5, 2008, Dr. Griffiths noted that appellant experienced a flare-up of chronic pain syndrome, carpal tunnel syndrome and myalgia and required extra assistance at home with activities of daily living and recommended home healthcare. She diagnosed fibromyalgia, carpal tunnel syndrome, reflex sympathetic dystrophy and cervical spine myelopathy. On August 8, 2008 appellant was seen in follow-up after a hospital admission in July for decompensation secondary to weakness. Dr. Griffiths diagnosed fibromyalgia, tobacco abuse, carpal tunnel syndrome, reflex sympathetic dystrophy and obesity. On August 12, 2008 she noted that appellant reached maximum medical improvement before May 4, 2007 and her condition has declined since that time. Dr. Griffiths noted that appellant was limited in the use of her arms due to pain, weakness and tremors.

In reports dated February 28, 2008, Dr. Truong noted findings of tenderness over the lumbar spine and right shoulder with normal manual muscle testing, reflexes and sensation in the lower extremities. He diagnosed fibromyalgia, nerve irritation at the wrists and right shoulder tendinitis and recommended steroid injections, acupuncture and aquatic therapy. Also submitted was a November 16, 2007 prescription note from Dr. Truong for aquatic therapy. A June 4, 2008 report from Dr. Michael L. Jorn, a psychologist, diagnosed adjustment disorder and anxiety and opined that these conditions were causally related to her work injury.

By a decision dated October 9, 2008, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Act,<sup>1</sup> the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>2</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

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

“(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 Office].”

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.<sup>3</sup>

### **ANALYSIS**

Appellant's March 4, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a November 30, 2007 report from Dr. Griffiths who noted treating appellant for severe neurologic disabilities since 1997 and

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> *Id.* at § 10.608(b).

diagnosed chronic pain, nerve injury, obesity, skin rashes, constipation and hemorrhoids due to her immobility. In reports dated May 5 to August 12, 2008, Dr. Griffiths noted that appellant experienced a flare-up of chronic pain syndrome, carpal tunnel syndrome and myalgia and required extra assistance at home with activities of daily living. She diagnosed fibromyalgia, carpal tunnel syndrome, reflex sympathetic dystrophy, cervical spine myelopathy, tobacco abuse and obesity. These reports are not relevant as they fail to address the underlying medical issue of whether appellant has greater permanent impairment of a schedule member of the body. Therefore, these reports are insufficient to require the Office to reopen the claim for a merit review.

Appellant also submitted an August 12, 2008 letter from Dr. Griffiths in support of her request for an additional schedule award. Dr. Griffiths noted that appellant reached maximum medical improvement on May 4, 2007 and referenced her report of the same date which provided an evaluation of appellant's upper extremity impairment. She noted that appellant experienced some decline in her ability to perform activities of daily living since that time. Dr. Griffiths noted that appellant was limited in the use of her upper extremities due to pain, weakness and tremors. However, her report, while new, is cumulative as it is similar to her May 4, 2007 report which was considered by the Office in its decision dated August 13, 2007. 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.<sup>4</sup>

Similarly, appellant submitted reports from Dr. Truong who treated her for tenderness over the lumbar spine and diagnosed fibromyalgia with nerve irritation at the wrists and right shoulder tendinitis and recommended steroid injections, acupuncture and aquatic therapy. As noted above, these reports are not relevant as they do not address permanent impairment of a schedule member and are also similar to Dr. Truong's previously submitted reports dated September 25, 2006 to April 19, 2007 which were considered by the Office in its decision dated August 13, 2007. 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.<sup>5</sup> The June 4, 2008 report from Dr. Jorn is not relevant as it also fails to address whether appellant has work-related permanent impairment of a schedule member of the body. Therefore, this report is insufficient to require the Office to reopen the claim for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.

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<sup>4</sup> 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; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>5</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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