

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL, Employer**

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**Docket No. 10-543
Issued: September 21, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2009 appellant filed a timely appeal of a December 1, 2009 decision of the Office of Workers' Compensation Programs, denying merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the December 1, 2009 decision. The Board does not have jurisdiction over a decision on the merits of the claim.¹

ISSUE

The issue is whether the Office properly denied appellant's application for reconsideration without merit review of the claim.

FACTUAL HISTORY

On October 8, 2002 appellant, then a 41-year-old mail processing clerk, filed an occupational claim (Form CA-2) alleging that she sustained a left hand injury causally related to

¹ The last merit decision was an Office decision dated June 10, 2009. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008). The 180-day period expired on December 7, 2009 and, therefore, the appeal was untimely with respect to the June 10, 2009 decision.

her federal employment. The claim was accepted for left wrist and thumb tenosynovitis and left wrist ganglion cyst. The Office later accepted a right carpal tunnel syndrome. On December 28, 2002 appellant filed a Form CA-2 alleging that she sustained a right hip condition as a result of her federal employment. The claim was accepted for right hip tendinitis/bursitis. The two claims had been administratively combined.

The Office issued a schedule award for a nine percent permanent impairment to the left arm on March 29, 2004. On July 14, 2005 a schedule award was issued for an additional six percent to the left arm. By decision dated December 20, 2006, the Office issued a schedule award for an additional one percent to the left arm.

In a decision dated June 10, 2009, the Office determined appellant was not entitled to an additional award for permanent impairment to the left or right arms. It stated that appellant had previously received 9 percent, 15 percent and 16 percent for the right and left arms.

In a letter dated August 23, 2009 and received by the Office on September 2, 2009, appellant requested reconsideration of her claim. She indicated she had not received schedule awards for 9, 15 and 16 percent as stated by the Office in its decision and accompanying memorandum.

By decision dated December 1, 2009, the Office denied merit review of the claim. It stated that the cover letter to the June 10, 2009 decision contained typographical errors, but the “Notice of Decision” was correct.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,² the Office’s regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: “(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office].”³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

On reconsideration appellant advanced a new and relevant legal argument with respect to her claim. She indicated that the Office had based its decision that she was not entitled to an additional schedule award on a finding that appellant had previously received schedule awards for 9, 15 and 16 percent. The record indicates that appellant received schedule awards for 9, 6

² 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application).”

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

and 1 percent to the left arm. While the Office dismissed the error as “typographical” in its December 1, 2009 decision, it had used the 9, 15 and 16 percent figures in its decision, the accompanying memorandum and in a January 27, 2009 memorandum to an Office medical adviser. Since the issue was whether appellant was entitled to an increased schedule award, clearly any determination must be based on an accurate finding regarding the schedule awards previously issued.

The Board finds that appellant met one of the standards under 20 C.F.R. § 10.606(b)(2) and, therefore, she is entitled to a merit review of her claim. The case will be remanded for an appropriate merit decision.⁵

CONCLUSION

The Board finds that the Office improperly denied appellant’s application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated December 1, 2009 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 21, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

⁵ The Board notes that the record contains a January 13, 2010 Office decision denying a hearing before an Office hearing representative. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case and those Office decisions which change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990).