

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

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**M.B., Appellant**

**and**

**FEDERAL JUDICIARY, U.S. PROBATION  
OFFICE, Dallas, TX, Employer**

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**Docket No. 07-322  
Issued: May 2, 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 November 15, 2006 appellant filed a timely appeal from the September 7, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the reconsideration issue.

**ISSUE**

The issue is whether the Office properly denied appellant's August 25, 2006 request for reconsideration.

**FACTUAL HISTORY**

On June 24, 2003 appellant, then a 43-year-old office clerk, filed a claim alleging that her bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and her neck and shoulder musculoskeletal disorders were a result of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome and bilateral lesion of the ulnar nerve. Appellant

underwent surgical decompression of the right and left median nerve on November 3, 2003 and January 12, 2004. She underwent surgical decompression of the right and left ulnar nerve on March 1, 2004.

On February 13, 2006 appellant filed a claim for a schedule award. She submitted an impairment rating from her hand surgeon, Dr. R. Robert Ippolito. On March 20, 2006 an Office medical adviser, Dr. H. Mobley, reviewed Dr. Ippolito's findings and determined that appellant had a 29 percent impairment of her left upper extremity and a 32 percent impairment of her right upper extremity due to sensory and motor deficits of the median and ulnar nerves. The record showed that appellant received a schedule award in 1996, under another case number,<sup>1</sup> for a 34 percent impairment of her right upper extremity. Dr. Mobley stated: "In my opinion, this 32 percent RUE [right upper extremity] evaluation represents the present total impairment of the RUE and is a duplication of [the earlier medical adviser's] 34 percent RUE. Therefore, there is no additional RUE schedule award."

On June 29, 2006 the Office issued a schedule award for a 29 percent permanent impairment of appellant's left upper extremity. On August 25, 2006 appellant requested reconsideration. She explained that her 1996 schedule award for the right upper extremity was specifically for loss of thumb and wrist motion and loss of strength, while Dr. Ippolito's current impairment rating was for the newly accepted conditions of bilateral carpal and cubital tunnel syndrome. Dr. Ippolito addressed the same point in his August 21, 2006 report. He stated that he disagreed with the Office medical adviser that appellant's impairment rating for the newly accepted conditions was a duplication.

In a decision dated September 7, 2006, the Office denied appellant's request for reconsideration. The Office found that the request neither raised substantive legal questions nor included new and relevant evidence and was, therefore, insufficient to warrant a review of the prior decision.

On appeal, appellant advances the same argument she made in her August 25, 2006 request for reconsideration. She disagrees that Dr. Ippolito's current impairment rating is a duplication of the rating she received in 1996. Appellant asks the Board to review all the documentation she provided "as I feel that no schedule award was paid for the right ulnar and median nerve damage."

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at anytime on its own motion or upon

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<sup>1</sup> Office File No. 160221910.

application.<sup>2</sup> The employee shall exercise this right through a request to the Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”<sup>3</sup>

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.<sup>4</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the 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.<sup>6</sup>

### **ANALYSIS**

The Board has jurisdiction to consider and decide appeals from the final decision of the Office in any case arising under the Act.<sup>7</sup> As the Board’s jurisdiction is limited to final decisions of the Office issued within one year prior to the date of the filing of the appeal,<sup>8</sup> the only decisions the Board may review on this appeal are the Office’s June 29, 2006 schedule award for a 29 percent permanent impairment of the left upper extremity and the Office’s September 7, 2006 decision denying appellant’s request for reconsideration. However, appellant does not appeal the schedule award for her left upper extremity. Neither she nor her hand surgeon, Dr. Ippolito, has expressed disagreement with the percentage awarded or the number of weeks paid for the impairment of that extremity. All of appellant’s argument relates to the right upper extremity and her contention that the Office should issue an additional schedule award for that extremity because her previous schedule award reflected no impairment for the accepted carpal and cubital tunnel syndromes.

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.605 (1999).

<sup>4</sup> *Id.* at § 10.606.

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608.

<sup>7</sup> *Id.* at § 501.2(c).

<sup>8</sup> *Id.* at § 501.3(d).

The Office's June 29, 2006 schedule award decision makes no mention of the right upper extremity. It cannot be interpreted by its terms or on its face as a denial of schedule compensation for the right upper extremity. The Office has issued no final decision on appellant's entitlement to an additional schedule award for her right upper extremity based on the newly accepted conditions. Dr. Mobley is an Office medical adviser and his March 20, 2006 comments do not constitute a final, appealable decision of the Office. Appellant observes that no schedule award was paid for the right ulnar and median nerve damage. More to the point, neither was a schedule award denied. With no final decision on the issue, the Board has no jurisdiction to entertain the merits of appellant's argument or to make a finding on whether she is entitled to an additional schedule award on the right.

The Board finds that appellant's request for reconsideration fails to meet at least one of the three standards for obtaining a merit review of her case. It does not show that the Office erroneously applied or interpreted a specific point of law when it awarded compensation for a 29 percent permanent impairment of the left upper extremity. Neither does it advance a relevant legal argument or include relevant new evidence. The reason is that the June 29, 2006 decision related solely to the left upper extremity. All of appellant's arguments and evidence relate to the right upper extremity, a matter not yet adjudicated by the Office. None of this argument or evidence is relevant to the schedule award for the left upper extremity.

Because appellant's request for reconsideration fails to meet at least one of the criteria for obtaining a merit review of her case, the Board will affirm the Office decision denying that request.<sup>9</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's August 25, 2006 request for reconsideration.

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<sup>9</sup> Appellant may simply ask the Office to issue a final decision with appeal rights on whether she is entitled to an additional schedule award for her right upper extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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