

The Office accepted that, on or before November 21, 2000, appellant, then a 50-year-old clerk, sustained bilateral carpal tunnel syndrome with a left median nerve release on October 9,

2001 and a right median nerve release on October 23, 2001. It also accepted left cubital tunnel syndrome with ulnar nerve release on December 14, 2001. The Office later accepted bilateral medial epicondylitis, left shoulder and upper arm strain and a left rotator cuff tear. Following intermittent absences related to the accepted conditions and surgeries, appellant returned to light-duty work on January 14, 2002. She continued under medical treatment. Appellant received wage-loss compensation for work absences.¹

On March 11, 2005 appellant claimed a schedule award.

On December 3, 2005 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon, for a schedule award evaluation. In a January 5, 2006 report, Dr. Agarwal provided clinical findings indicating a 12 percent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity.² In a January 11, 2006 report, an Office medical adviser calculated that, based on Dr. Agarwal's findings, appellant had a 12 percent permanent impairment of the left arm and 15 percent permanent impairment of the right arm.

By decision dated March 28, 2006, the Office awarded appellant a schedule award for a 12 percent permanent impairment of the right upper extremity and a 15 percent permanent impairment of the left upper extremity. The period of the award ran from March 19, 2006 to October 29, 2007.³

In a letter dated March 20, 2007 and postmarked March 21, 2007, appellant requested reconsideration. She contended that Dr. Agarwal provided grip and pinch strength measurements but did not perform those tests. Also, one of appellant's physicians found it questionable that Dr. Agarwal found "measurements were exactly the same for both arms, both wrists and both hands" and that the impairment ratings were so low. Appellant asserted that Dr. Agarwal's opinion was flawed as he incorrectly stated that the Office denied one of her upper extremity claims. She explained that her attending physician recommended a second impairment rating. Appellant therefore made an appointment with a clinic in Oklahoma City but

¹ From March 2003 through 2004, the Office conducted additional medical development regarding appellant's work capacity and the nature of the accepted conditions. This development is not relevant to the present appeal. By decision dated November 21, 2003, the Office reduced appellant's compensation based on her actual earnings. This decision is not before the Board on the present appeal.

² Dr. Agarwal opined that appellant had reached maximum medical improvement. He stated that appellant had a 10 percent impairment of each arm due to status post median nerve release. Dr. Agarwal added a two percent additional impairment on the right due to a 20 degree loss of elbow extension and a three percent additional impairment on the left due to a 30 degree loss of elbow extension. He also provided a three percent impairment to the left upper extremity due to the ulnar nerve transfer. Dr. Agarwal utilized the upper extremity grading scheme worksheets on page 427 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

³ By decision dated May 31, 2006, the Office reduced appellant's monetary compensation benefits to zero as she had been successfully reemployed as a modified clerk for more than 60 days at a rate of pay equal to or higher than her date-of-injury position. This decision is not before the Board on the present appeal.

would not be seen until April 4, 2007. She requested a 30-day extension in which to submit additional evidence.⁴

By decision dated April 13, 2007, the Office denied appellant's request for reconsideration on the grounds that her March 20, 2007 letter, the only evidence submitted, did not contain relevant evidence sufficient to warrant a merit review of the prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ Appellant need only submit relevant, pertinent evidence not previously considered by the Office.⁹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁰

ANALYSIS

The Office granted appellant a schedule award on March 28, 2006. Appellant requested reconsideration by letter dated March 20, 2007 and postmarked March 21, 2007. She contended that the schedule award evaluation of Dr. Agarwal, a Board-certified orthopedic surgeon and second opinion physician, contained fabricated test results and factual errors.

The critical issue at the time of the last merit decision was the percentage of permanent impairment related to the accepted conditions. To be relevant, the evidence submitted in support

⁴ Appellant's letter mentioned particular pages of Dr. Agarwal's report by page number. She enclosed a copy of Dr. Agarwal's report for reference purposes.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.608(b). *See also T.E.*, 59 ECAB ____ (Docket No. 07-2227, issued March 19, 2008).

⁸ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁹ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹⁰ *Annette Louise*, 54 ECAB 783 (2003).

of the March 21, 2007 request for reconsideration must address that issue. The only evidence appellant submitted in support of her reconsideration request was her March 20, 2007 letter. This letter did not contain relevant medical evidence regarding the percentage of permanent impairment related to her occupational conditions. Therefore, her letter is not relevant and pertinent and is not sufficient to require the Office to reopen her claim for consideration of the merits.¹¹

On appeal, appellant contended that she “forwarded” additional medical evidence to the Office on April 12, 2007. However, there is no postmark, certified mail receipt, fax receipt or other documentation establishing that she submitted any correspondence to the Office on April 12, 2007.

Thus, appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant’s request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated April 13, 2007 is affirmed.

Issued: August 13, 2008
Washington, DC

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

David S. Gerson, Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

¹¹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).