

On December 12, 2002 appellant, then a 44-year-old customer service support supervisor, filed a traumatic injury claim alleging that she felt a sharp pain in her left knee on September 18, 2002 while in the performance of duty. She stopped work on November 2, 2002. The Office

accepted the claim for left knee chondromalacia and aggravation of left knee meniscus tear and authorized a February 11, 2003 left knee osteochondral autograph transfer system surgical procedure. Appellant returned to light duty on or about March 27, 2003 and stopped work again on November 8, 2003 due to an accepted left shoulder condition under case number 062096564.¹ She subsequently retired on disability in April 2004.

On January 5, 2006 appellant filed a Form CA-7 schedule award claim for her accepted left knee condition.

In a December 23, 2005 letter, Dr. Lyman S.W. Smith, a Board-certified orthopedic surgeon, found that appellant had a 21 percent permanent impairment of the left knee. He noted that appellant had developed reflex sympathetic dystrophy or causalgia of the leg and underwent a surgical procedure for a Grade 4 articular lesion in the medial femoral condyle. Dr. Smith rated impairment by identifying a Class 2 to 3 criteria under Table 13-15, page 336 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), as well as significant arthritis as a 15 percent permanent impairment.² He additionally noted that appellant had a previous impairment rating of seven percent based on arthritis and opined that this rating should be combined with her current arthritis rating. Using the Combined Values Chart on page 604 of the A.M.A., *Guides*, Dr. Smith opined that appellant had a total 21 percent permanent impairment of the left knee.

In a January 19, 2006 report, an Office medical adviser agreed that appellant had a seven percent permanent impairment as a result of her meniscectomy. However, he determined that Dr. Smith's 15 percent impairment rating for arthritis required further clarification. The Office medical adviser noted that Table 13-15 of the A.M.A., *Guides* deals with whole person impairment, which is not accepted by the Office. He also noted that Dr. Smith failed to substantiate his rating as no radiologic cartilage interval was provided as required by the A.M.A., *Guides*.³

In a January 24, 2006 letter, the Office requested that Dr. Smith clarify his impairment rating by providing additional details of how he arrived at the 15 percent permanent impairment. A copy of the Office medical adviser's report was provided. The Office did not receive a response from Dr. Smith.

By decision dated November 13, 2006, the Office granted appellant a schedule award for seven percent permanent impairment of the left lower extremity.

In an October 18, 2007 letter, appellant requested reconsideration of the Office's November 13, 2006 decision. She stated that she had significant arthritis and would eventually

¹ The record reflects appellant has several other cases with the Office. These include: case number 062096564 for an accepted left shoulder condition of September 22, 2003; case number 062071083 for an arm condition of October 7, 2002; and case number 060724117 for an accepted left knee condition of March 19, 1999.

² A.M.A., *Guides* 336, Table 13-15, rates impairment due to station and gait disorders of one central or peripheral nervous system.

³ See *id.* at 544, Table 17-31.

need a total knee replacement due to ongoing pain. Appellant advised that she had another knee surgery in February 2007 and had to retire due to her knee condition. In an October 16, 2007 letter, Dr. Smith advised that he stood by his previous rating of October 28, 2005.⁴ Other medical evidence of file subsequent to the Office's November 13, 2006 decision did not contain any information addressing appellant's impairment.

By decision dated November 28, 2007, the Office denied appellant's request for reconsideration without conducting a merit review. It found that she did not provide any additional relevant medical evidence or legal argument to establish that her schedule award rating of seven percent to the left lower extremity was incorrect or that she had greater impairment than that awarded.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁵ Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that, when an application for reconsideration 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 The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.⁸ It is well established that evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case for merit review.⁹

ANALYSIS

The only decision before the Board in this appeal is the November 28, 2007 decision denying appellant's application for review of the Office's November 13, 2006 schedule award, which found that she had a seven percent permanent impairment to her left lower extremity. To be relevant, the arguments and evidence submitted in support of the October 18, 2007 request for reconsideration must address whether the Office erred in its determination of the impairment rating or whether appellant has impairment greater than the amount awarded.

⁴ The Board notes the prior rating from Dr. Smith was dated December 23, 2005.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.608(b).

⁸ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁹ *See Arlesa Gibbs*, 53 ECAB 204 (2001).

In her October 18, 2007 request for reconsideration, appellant advised that she underwent an additional surgical procedure to her knee, noted the current condition of her left knee and the possible need for a total knee replacement. However, the matter of determining permanent impairment of a scheduled member of the body is a medical issue.¹⁰ Appellant's assertions regarding the extent of her permanent impairment are not relevant to the underlying issue. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.¹¹ Appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹²

In support of her request for reconsideration, appellant submitted an October 16, 2007 letter from Dr. Smith, who reiterated his prior impairment rating of 21 percent impairment rating to the left lower extremity. As his letter simply restated his previous opinion, it is cumulative of evidence already of record. As noted, evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case for merit review.¹³ None of the evidence of record subsequent to the Office's November 13, 2006 decision addresses appellant's impairment rating and is not relevant to the issue at hand. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).¹⁴ She did not meet the third criteria for warranting a merit review.

The Board finds that appellant did not meet any of the three criteria warranting further merit review. The Office properly denied her October 18, 2007 request for reconsideration without conducting a merit review.

CONCLUSION

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

¹⁰ The degree of functional impairment or injury is essentially a medical question that can only be established by medical evidence. *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007).

¹¹ *Joseph A. Brown, Jr.*, *supra* note 8.

¹² 20 C.F.R. § 10.606(b)(2)(i) and (ii).

¹³ *See Arlesa Gibbs*, *supra* note 9.

¹⁴ *See Joseph A. Brown, Jr.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2007 is affirmed.

Issued: August 22, 2008
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