United States Department of Labor
Employees' Compensation Appeals Board

W.L., Appellant	)	
and	)	**Docket No. 07-2411**
	)	**Issued: March 4, 2008**
DEPARTMENT OF THE ARMY, ARMY DEPOT, Tooele, UT, Employer	)	

Appearances:
Apellant, 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 September 26, 2007 appellant filed a timely appeal from the September 28, 2006 nonmerit decision of the Office of Workers' Compensation Programs which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial. The Board has no jurisdiction to review the Office hearing representative's September 27, 2005 merit decision affirming the denial of an additional schedule award, as more than one year has passed from the date of that decision to the date of this appeal.

ISSUE

The issue is whether the Office properly denied appellant's September 21, 2006 request for reconsideration.

FACTUAL HISTORY

On July 24, 1995 appellant, then a 34-year-old maintenance mechanic, filed a claim alleging that his carpal tunnel condition was a result of his federal employment: "By working as a mechanic and using tools such an impact wrenches, hammers, pliers, screw drivers, saws and

hand tools, my hands become numb from gripping tools." The Office accepted his claim for bilateral carpal tunnel syndrome and approved surgery. On September 26, 2000 appellant received a schedule award for a 10 percent permanent impairment to each upper extremity.

On March 7, 2002 appellant advised: "My condition has gradually worsened to the point where I cannot sleep at night with elbows bent. My forearms and two outside fingers go numb. Pain in forearms and elbows, [b]oth arms, hurts to rest elbows on any surfaces." The Office expanded its acceptance of appellant's claim to include bilateral cubital tunnel syndrome and approved surgery on the right.

Appellant filed a claim for a schedule award. He submitted reports from Dr. Ripley J. Siggard, the orthopedic surgeon, who performed the cubital tunnel surgery and Dr. John F. Bermen who earlier rated the impairment due to bilateral carpal tunnel syndrome. Dr. Siggard reported and Dr. Bermen agreed, that appellant had a six percent impairment of the right upper extremity and a two percent impairment on the left upper extremity due to ulnar nerve involvement at the elbow. Following a second opinion by Dr. Thomas D. Noonan, also an orthopedic surgeon, an Office medical adviser calculated that appellant had a nine percent impairment of the right and a four percent impairment on the left due to ulnar nerve involvement at the elbow.

In a decision dated August 23, 2004, the Office denied appellant's claim for an additional schedule award. It explained that impairments found were less than the Office previously awarded.

In a decision dated September 27, 2005, the Office hearing representative affirmed the denial of an additional schedule award:

> "In this case, the claimant sustained an occupational injury that resulted in bilateral carpal tunnel syndrome with repair as well as bilateral ulnar nerve syndrome with nerve transposition. The Office initially awarded the claimant 10 percent permanent impairment bilaterally to his upper extremities as a result of his carpal tunnel condition with surgery. Following surgery to his ulnar nerve, [appellant] filed a claim for increased permanent impairment.
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> "While the treating physicians opined that [appellant] had a 26 percent impairment to the right and a 22 percent impairment to the left, he did not provide specific detailed findings nor compare these findings to specific tables and charts in the A.M.A., [American Medical Association] *Guides,* [*to the Evaluation of Permanent Impairment*] 5th ed. The Office referred the claimant for an evaluation with Dr. Noonan who concluded that [appellant] had a permanent impairment because of sensory changes from his ulnar nerve as a result of his condition.
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> "[Appellant] argued at the hearing that Dr. Noonan's examination was not thorough and therefore his report was not representative of his impairment. However, in reviewing his report, Dr. Noonan discusses his findings in more detail tha[n] those provided by the treating physician. [Appellant] and Dr. Bermen argued that Dr. Noonan did not include the impairment for [his]

carpal tunnel condition only for his ulnar nerve because Dr. Noonan was not asked to include this condition. I find that, while the Office did not specifically ask Dr. Noonan if [appellant] had an impairment as a result of the carpal tunnel, the statement of accepted facts as well as the medical evidence of file clearly showed that [he] had developed this condition and this was accepted by the Office. Dr. Noonan's report states that he reviewed the statement of accepted facts submitted to him. In addition, the Office requested [appellant] [sic] provide a diagnosis of all current conditions based on his findings and test results and Dr. Noonan opined that [appellant] had bilateral cubital syndrome. There was no mention by Dr. Noonan, nor have the treating physicians for the last several years diagnosed, continued carpal tunnel syndrome. The Office further requested Dr. Noonan [to] discuss permanent functional loss to all the compensable areas permanently impaired. Dr. Noonan responded by only opining that the claimant currently only has an impairment due to sensory impairment from the ulnar nerve. There is no evidence in any of the contemporary medical evidence that the claimant continues to have residuals of the carpal tunnel syndrome or that this condition continues to result in a permanent impairment. Although Dr. Bermen states that Dr. Noonan did not consider this, neither Dr. Bermen's reports nor Dr. Siggard's reports discuss any current permanent impairment resulting from this condition.

"After careful consideration, I find that [the] thorough well-reasoned report of Dr. Noonan has the weight of the medical opinion and supports that [appellant] does not have a greater impairment to his upper extremities tha[n] what was previously awarded."

Appellant requested reconsideration. In an undated letter received by the Office on September 21, 2006, appellant expressed his disagreement with the hearing representative's decision:

"I feel that the rating from Dr. Noonan is calculated incorrectly only taking into consideration my ulnar nerve involvement not my whole upper extremity as explained by my physician Dr. Bermen in his letter dated July 18, 2005. I would like Dr. Noonan to take into consideration my carpal tunnel rating as well as my ulnar nerve rating and combine those for total upper extremity rating as did Dr. Bermen and Dr. Siggard.

"I would appreciate it if you could send me back to Dr. Noonan to have this calculated correctly."

In a decision dated September 28, 2006, the Office denied appellant's request for reconsideration. It found that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[1] An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[2]

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.[3]

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.[4]

ANALYSIS

Appellant's undated request for reconsideration, received by the Office on September 21, 2006, was timely. He made the request within one year of the Office hearing representative's September 26, 2005 merit decision affirming the denial of an additional schedule award. The question, therefore, is whether appellant's request for reconsideration meets at least one of the standards for obtaining a merit review of his case.

To support his request, appellant submitted no additional evidence. So he is not entitled to a merit review of his case under the third standard. Rather, he argued that the Office should have combined the ratings for his elbows with the ratings for his wrists, but this is not a new argument. It is the same argument he made to the Office hearing representative. The Office hearing representative answered this argument in her September 27, 2005 decision by explaining that there was no contemporary medical evidence that appellant continued to experience residuals of the carpal tunnel syndrome or that this condition resulted in permanent impairment. Because appellant simply repeated an argument the Office previously considered, he is not entitled to a merit review of his case under the second standard.

[1] 20 C.F.R. § 10.605 (1999).

[2] *Id*. at § 10.607(a).

[3] *Id*. at § 10.606.

[4] *Id*. at § 10.608.

Appellant's request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law. He merely repeated his prior argument. He mentions no specific point of law, nor does appellant show that the Office erroneously applied or interpreted a specific point of law. For this reason appellant is not entitled to a merit review of his case under the first standard.

The Board will affirm the Office's September 28, 2006 decision denying appellant's request for reconsideration. His request does not meet at least one of the three standards for obtaining a merit review of his case.

CONCLUSION

The Board finds that the Office properly denied appellant's September 21, 2006 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2008
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