

On July 12, 2005 appellant, then a 49-year-old production machinery mechanic, filed a traumatic injury claim alleging that he sustained injuries to his shoulders, collar bone and ribs after being pinned between two man lifts. He stopped work on July 12, 2005 and returned to a light-duty position four hours per day on October 12, 2005 and full-time work with restrictions

on August 13, 2006.¹ The Office accepted the claim for bilateral shoulder clavicle fractures, bilateral scapula fractures, fracture of the ribs, multiple abrasions and aggravation of C5-6 retrolisthesis.

Appellant came under the treatment of Dr. Thomas Higgins, a Board-certified orthopedic surgeon, who on July 13, 2005 performed an open reduction, internal fixation of the right clavicle and closed treatment with manipulation of the right scapula. Dr. Higgins diagnosed multiple chest trauma with pulmonary contusions and bilateral flailed segments, right floating shoulder with displaced shortened clavicle fracture and displaced shortened scapular fracture with severely shortened right forequarter. On July 14, 2005 he performed closed treatment of the left clavicle fracture and left scapular fracture and diagnosed multiple trauma to the chest and bilateral shoulders, left medial clavicle and left scapular fracture. In later reports, Dr. Higgins noted that appellant was progressing well postoperatively but had right shoulder weakness and reduced range of motion.

On August 2, 2006 appellant filed a claim for a schedule award. He submitted a July 21, 2006 report from Dr. Brian H. Morgan, Board-certified in physical medicine and rehabilitation, who opined that appellant had eight percent impairment of the right upper extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*). On August 7, 2006 an Office medical adviser concurred with Dr. Morgan's impairment determination.

In an August 15, 2006 decision, the Office granted appellant a schedule award for eight percent permanent impairment of the right upper extremity. The period of the award was from July 21, 2006 to January 11, 2007.

On September 1, 2006 appellant requested an oral hearing which was held on January 5, 2007. He submitted reports from Dr. Higgins dated January 17, 2006 to January 29, 2007, who recommended a functional capacity evaluation to determine impairment of the right upper extremity. On January 30, 2007 appellant underwent a functional capacity evaluation which revealed limited range of motion of the glenohumeral as well as deformity and lack of movement in the scapular and collarbone.

On March 20, 2007 the hearing representative affirmed the Office decision dated August 15, 2006.

On November 19, 2007 appellant requested reconsideration. He submitted reports from Dr. Higgins dated February 28 and October 30, 2007, who opined that appellant sustained a 23 percent impairment of the right upper extremity in accordance with the A.M.A., *Guides*.

¹ In a June 21, 2007 decision, the Office reduced appellant's wage-loss compensation to zero upon finding that his actual earnings as a full-time maintenance mechanic supervisor fairly and reasonably represented his wage-earning capacity.

² A.M.A., *Guides* (5th ed. 2001).

On April 15, 2008 the Office referred Dr. Higgin's report and the case record to the Office's medical adviser who opined that appellant had eight percent permanent impairment of the right upper extremity as previously determined.

In a decision dated May 29, 2008, the Office denied modification of the prior decision.

In an appeal form dated May 22, 2009, appellant requested reconsideration.

In a June 8, 2009 decision, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,³ the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁴ which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁵

ANALYSIS

Appellant's May 22, 2009 request for reconsideration consisted of an appeal request form in which he placed an “x” next to the word “reconsideration” and provided no explanation as to why he believed that his claim warranted further review by the Office. He submitted new medical evidence regarding the underlying issue in his claim, permanent impairment of his right arm.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.608(b).

As appellant did not show that the Office erroneously applied or interpreted a point of law, did not advance a point of law or fact not previously considered by the Office, and did not submit relevant and pertinent new evidence not previously considered by the Office, the Board finds that the Office properly determined that appellant is not entitled to a review of the merits of his claim. The Office properly denied his May 22, 2009 request for reconsideration.

On appeal, appellant asserts that his schedule award was based solely on the movement of his arm. He disputed the Office's reasoning in denying his claim for an additional schedule award asserting that the loss of strength in his arm should be considered in determining permanent impairment. The Board notes, however, that it does not have jurisdiction over the question of whether the Office properly rated appellant's permanent impairment. The Board only has jurisdiction over whether the Office properly denied a merit review of the claim. As explained, appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 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