

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

D.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Franklin, WI, Employer**

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**Docket No. 10-1231
Issued: December 2, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2010 appellant filed a timely appeal of a September 30, 2009 decision of the Office of Workers' Compensation Programs, denying merit review of her claim. For Office decisions issued after November 18, 2008, appellant has 180 days to file a timely appeal before the Board.¹ Since more than 180 days has elapsed between the last merit decision on April 30, 2009 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

The issue is whether the Office properly determined appellant's application for reconsideration was insufficient to warrant merit review of the claim.

¹ For final adverse Office decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2). For final adverse Office decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On February 3, 2007 appellant, then a 46-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries as a result of her federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome.

Appellant also has two other claims that have been administratively combined into the current master file. On July 21, 2008 she filed an occupational disease claim alleging a left shoulder and bilateral index finger injury causally related to her job duties commencing in March 2008.² The Office accepted the claim for left rotator cuff sprain/strain.

On December 28, 2008 appellant filed an occupational disease claim alleging a right elbow injury causally related to her employment.³ The Office accepted the claim for right lateral epicondylitis on April 3, 2009.

By decision dated April 30, 2009, the Office issued a schedule award for a five percent left arm impairment. The period of the award was 15.80 weeks commencing July 21, 2008.

In an undated letter received by the Office on August 21, 2009, appellant requested reconsideration. She stated that she had received a schedule award only for the left arm, not the right arm. Appellant indicated that she was enclosing an electromyogram (EMG) showing “denervation in bilateral APB [abductor pollicis brevis]” which she stated was evidence of permanent nerve damage in both hands, according to her physician. She also stated that her physician recommended three percent impairment on both the left and right, and she requested the Office to reconsider and provide an award for both arms.

As to an EMG report, on August 21, 2009 the Office received a March 27, 2007 report from a Dr. Elizabeth Polacheck providing EMG and nerve conduction velocity results.⁴ This report had previously been submitted on April 17, 2008.

By decision dated September 30, 2009, the Office determined that the application for reconsideration was insufficient to warrant merit review of the claim.

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.⁵ The employee shall exercise this right through a request to

² OWCP File No. xxxxxx961.

³ OWCP File No. xxxxxx697.

⁴ The report was filed under the right elbow epicondylitis claim.

⁵ 5 U.S.C. § 8128(a).

the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”⁶

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 evidence not previously considered by the Office.⁷

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.⁸

ANALYSIS

Appellant requested reconsideration of the April 30, 2009 schedule award decision, which awarded appellant 15.80 weeks of compensation for a five percent left arm impairment. On reconsideration she indicated that she felt the schedule award should have included an impairment for the right arm, as her physician had recommended an award on each side. The Board notes the schedule award determination was based on the opinion of an Office medical adviser. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

In her application, appellant indicated that she had submitted an EMG report that her physician had told her showed permanent nerve damage. This report was previously submitted in April 2008 and therefore does not represent new evidence. Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) in her application for reconsideration: she did not show that the Office erroneously applied or interpreted a specific point of law; advance a new and relevant legal argument; or submit new, relevant and pertinent evidence. Pursuant to 20 C.F.R. § 10.608, appellant was not entitled to a merit review of her claim.⁹

On appeal, appellant reiterates her contention that she should have received an award for both hands. She stated that she still has occasional numbness and pain and Dr. Schneider feels

⁶ 20 C.F.R. § 10.605 (1999).

⁷ *Id.* at § 10.606(b)(2).

⁸ *Id.* at § 10.608.

⁹ The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

the original EMG supported an award to both hands. As noted above, the Board does not have jurisdiction over the April 30, 2009 merit decision. The only issue on appeal is whether appellant's application for reconsideration was sufficient to warrant merit review. The EMG report was not new and relevant evidence and, for the reasons noted above, the Office properly denied merit review.

CONCLUSION

The Board finds that the Office properly denied merit review in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2009 is affirmed.

Issued: December 2, 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