United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 10-958**
	)	**Issued: November 15, 2010**
DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, Birmingham, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 23, 2010 appellant filed a timely appeal of a February 4, 2010 decision of the Office of Workers' Compensation Programs denying further merit review. Because over 180 days elapsed between the most recent merit decision of April 1, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 2, 2002 appellant, then a 53-year-old safety specialist, filed an occupational disease claim alleging that he developed pain in his wrists and forearms while typing. The Office accepted his claim for bilateral carpal tunnel syndrome. Appellant returned to work. On

June 1, 2005 he filed a notice of recurrence of disability alleging that on May 1, 2005 his carpal tunnel syndrome symptoms increased. The Office authorized continuing medical treatment on June 16, 2005. Appellant underwent a left carpal tunnel release on April 4, 2008. Dr. Perry Savage, a Board-certified orthopedic surgeon, performed a right carpal tunnel release on May 9, 2008.

Appellant requested a schedule award on August 12, 2008. On October 6, 2008 he underwent electrodiagnostic studies which revealed moderate bilateral carpal tunnel syndromes. In an October 13, 2008 note, Dr. Savage opined that appellant had reached maximum medical improvement and had five percent permanent impairment of each hand. On October 31, 2008 he indicated that he based his impairment rating on the 5th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[1] The district medical adviser, Dr. Daniel D. Zimmerman, a Board-certified orthopedic surgeon, reviewed the record on January 23, 2009. He found that additional medical evidence was required as Dr. Savage did not provide the documentation required by the A.M.A., *Guides* in support of his impairment rating.

The Office referred appellant for a second opinion evaluation with Dr. Jack D. Denver, Board-certified in physical medicine and rehabilitation. Dr. Denver examined appellant on March 5, 2009 and found give way weakness during muscle testing with no atrophy. He stated that appellant demonstrated obvious poor effort during Froment's sign. Dr. Denver determined that appellant had 33 percent impairment of the right upper extremity and 16 percent impairment of the left upper extremity. Dr. Zimmerman reviewed this report on March 21, 2009 and found that appellant had no ratable impairment of his upper extremities as the examination findings were not reliable or credible.

By decision dated April 1, 2009, the Office denied appellant's request for a schedule award based on Dr. Zimmerman's review of the medical evidence.

Appellant requested reconsideration on January 10, 2010 and stated that his hands tingled continuously. He resubmitted Dr. Savage's October 13 and 31, 2008 notes, the October 6, 2008 electrodiagnostic study and a portion of a functional capacity evaluation signed by an occupational therapist. Appellant also submitted a note from Dr. Savage dated April 16, 2009 prescribing bilateral carpal tunnel splints.

By decision dated February 4, 2010, the Office denied reconsideration of the merits. It reviewed the evidence and found that appellant failed to submit relevant new evidence in support of his claim for a schedule award.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.[2] Section 10.606(b) of the Code of Federal Regulations provide

[1] A.M.A., *Guides* (5th ed. 2000).

[2] 5 U.S.C. §§ 8101-8193, 8128(a).

that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by the Office; or includes relevant and pertinent new evidence not previously considered by the Office.[3] Section 10.608 of the Office's regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.[4]

ANALYSIS

In an April 1, 2009 decision, the Office denied appellant's claim for a schedule award. Appellant requested reconsideration on January 10, 2010. He resubmitted reports from Dr. Savage addressing his permanent impairment. The Board has held that the submission of evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case. As Dr. Savage's reports were previously considered by the Office in issuing the April 1, 2009 merit decision, these reports are not relevant new evidence and are not sufficient to require the Office to reopen appellant's claim for consideration of the merits.[5]

Appellant submitted an additional note from Dr. Savage dated April 16, 2009 prescribing splints for his bilateral carpal tunnel syndrome. This note, while new medical evidence, is not relevant to the issue of the extent of appellant's permanent impairment. Appellant also submitted a report from an occupational therapist. Lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Federal Employees' Compensation Act.[6] As this report is not medical evidence, it is not relevant to the central issue in the claim, whether appellant sustained any permanent impairment due to his accepted employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7] As these reports do not address the issue of appellant's permanent impairment, the reports are not sufficient to require the Office to review the merits of his case.

CONCLUSION

The Board finds that appellant's January 10, 2009 request for reconsideration did not provide pertinent new and relevant evidence requiring the Office to reopen his claim for consideration of the merits.

[3] 20 C.F.R. § 10.606.

[4] *Id.* at § 10.608.

[5] *M.E.* 58 ECAB 694 (2007).

[6] *Id*. at §§ 8101-8193, 8101(2); *David P. Sawchuk*, 57 ECAB 316 (2006).

[7] *M.E. supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2010 decision of Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board