

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

---

**BEVERLY A. CLARK, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 04-1522  
Issued: December 6, 2004**

*Appearances:*  
*Beverly A. Clark, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On May 24, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 23, 2004 which denied her reconsideration request under 5 U.S.C. § 8128. Because more than one year has elapsed between the last Office merit decision dated February 19, 2003 and, May 24, 2004, the date appellant filed the appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 (d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

By letter dated February 10, 2004, appellant, then age 55, requested review of a decision of an Office hearing representative dated February 19, 2003.<sup>1</sup> In support of her request, she submitted two new medical reports.

In an April 14, 2003 report, Dr. James E. Beale, Jr., a Board-certified orthopedic surgeon, noted appellant's present symptomatology, provided examination results, and opined that she remained unchanged and had reached maximum medical improvement. No opinion on disability or a recurrence of disability was given.

In an October 15, 2003 report, Dr. Laran Lerner, an osteopathic physician Board-certified in physical medicine and rehabilitation, graded appellant's residual impairment, discussed her deficits upon examination, and opined that she qualified for full upper extremity impairment of the hands due to carpal tunnel syndrome. No opinion on disability or a recurrence of disability was given.

Dr. Nabil F. Anglely, a Board-certified orthopedic surgeon and Office referral physician, provided a May 14, 2003 report to the Office's questions, noting that he was unable to provide the requested permanent impairment rating due to incomplete information. Referral to Dr. Beale was recommended.

By decision dated February 23, 2004, the Office denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) on the grounds that the evidence submitted in support of the request was irrelevant and immaterial and was not sufficient to warrant review of the prior decision. The Office found that both the April 14 and October 15, 2003 reports of Dr. Beale and Dr. Lerner lacked any opinions on the relevant issue in the case, *i.e.*, whether appellant had intermittent disability for work and claimed recurrences of disability on or after September 25, 2000 causally related to the accepted carpal tunnel syndrome. The reports were irrelevant and did not constitute new and material evidence not previously considered.

## **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence or argument that repeats or duplicates evidence already in the case record has

---

<sup>1</sup> The Office had accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of her duties. By decision dated February 19, 2003, the Office hearing representative found that appellant had not established that she sustained intermittent recurrences of disability after September 25, 2000, causally related to her bilateral carpal tunnel syndrome.

<sup>2</sup> 20 C.F.R. § 10.606(b).

no evidentiary value and does not constitute a basis for reopening a case.<sup>3</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>4</sup>

### ANALYSIS

The only decision before the Board on this appeal is the Office's February 23, 2004 decision denying appellant's request for reconsideration of a February 19, 2003 decision which denied her claim for intermittent disability on or after September 25, 2000. Because more than one year has elapsed between the issuance of the Office's February 19, 2003 merit decision and May 24, 2004, the stamped date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the February 19, 2003.<sup>5</sup>

Appellant submitted medical reports from Dr. Beale and Dr. Lerner, and contended that impairment due to her accepted bilateral carpal tunnel syndrome was demonstrated by these reports. Although the reports were new and not previously considered by the Office, they lacked any relevant information or opinion concerning the issue addressed in the February 19, 2003 merit decision, *i.e.*, whether her claimed periods of intermittent disability on or after September 25, 2000 were causally related to her accepted condition. The Office properly conducted a limited review of these reports and determined that they were irrelevant and immaterial to the issue of the case, and did not constitute a basis for reopening the claim for further merit review.

The Office also noted that the second opinion report it had requested addressed only the issue of permanent impairment and was not conclusive with respect to that issue, and hence was not probative to the issue at hand.

The Board finds that neither medical report submitted by appellant contained any rationalized opinion on the issue of her intermittent periods of disability. The evidence does not address the particular issue involved nor constitute a basis for reopening the case. The April 14, 2003 report from Dr. Beale and the October 15, 2003 report from Dr. Lerner do not constitute new and relevant evidence sufficient to warrant reopening the case for further consideration on its merits.

### CONCLUSION

Based upon the above-noted limited review of the April 14 or October 15, 2003 medical reports, they are irrelevant to the issues of the case and therefore do not constitute a basis for reopening the case for further review on its merits.

---

<sup>3</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>4</sup> *Kevin M. Fatzner*, 51 ECAB 407 (2000).

<sup>5</sup> 20 C.F.R. § 501.3(d)(2)(ii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 23, 2004 is affirmed.

Issued: December 6, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member