



## **FACTUAL HISTORY**

On April 8, 1991 appellant, then a 42-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome and tendinitis in the performance of duty. She stopped work on March 27, 1991 and returned to light duty on May 15, 1992. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized appropriate benefits.<sup>2</sup>

On December 18, 2001 appellant filed a claim for a schedule award.

On April 3, 2002 the Office received a December 30, 1992 electro diagnostic study, read by Dr. Girija N. Singh, Board-certified in physical medicine and rehabilitation, which revealed prolonged distal latencies in the left median nerve. He noted some improvement in the right median nerve since the release of carpal tunnel syndrome and that there was no significant abnormality in the muscles. The Office also received a January 13, 1993 progress note in which Dr. Rafik D. Muawwad, a Board-certified orthopedic surgeon, stated that there was a possibility that problems could occur if she went back to her regular job with the right wrist since it was surgically treated. He noted that appellant's main problems were with the left wrist.

In a May 21, 2002 report, Dr. Muawwad determined that appellant had 10 percent impairment to both upper extremities.

An electromyography (EMG) and nerve conduction study dated July 25, 2002 from Dr. Singh revealed normal nerve conduction in the ulnar, median and radial nerves. It also revealed prolonged distal latencies in the left median nerve.

In a report dated August 21, 2002, the Office medical adviser determined that appellant was entitled to a schedule award of five percent for the left upper extremity.

By decision dated August 27, 2002, the Office issued a schedule award for five percent impairment of the left upper extremity. The period of the award was 15.60 weeks, to run from September 16, 1994 to January 3, 1995.

By letter dated September 17, 2002, appellant requested reconsideration. She indicated that she had surgery on her right wrist and her left wrist also had carpal tunnel.

On October 9, 2002 appellant filed a claim for a schedule award.

By decision dated November 4, 2002, the Office denied a merit review of her claim on the grounds that her request neither raised substantive legal argument nor included new and relevant evidence.

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<sup>2</sup> On December 18, 1991 the Office authorized surgery. Appellant had a carpal tunnel release on the right wrist on January 9, 1992 and a left carpal tunnel release was authorized on September 16, 1993. The left carpal tunnel release was not performed.

In a December 30, 2002 report, Dr. Muawwad noted that appellant had previous surgery to her right wrist and still had symptoms. He indicated that she might be developing additional symptoms that would show positive on the EMG and recommended that it may need to be repeated; however, his rating of May 21, 2002 remained.

On March 11, 2003 the Office medical adviser indicated that appellant was entitled to a 10 percent impairment of the right upper extremity.

By decision dated April 25, 2003, the Office issued a schedule award for 10 percent impairment of the right upper extremity. The period of the award was 31.2 weeks, to run from May 21 to December 25, 2002.

By letter dated May 15, 2003, appellant requested reconsideration and provided copies of reports which were previously submitted along with a copy of her September 17, 2002 reconsideration request.<sup>3</sup>

By decision dated August 22, 2003, the Office denied appellant's reconsideration request on the grounds that her request neither raised substantive legal argument, nor included new and relevant evidence.

#### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>4</sup>

The Secretary of Labor may review an award for or against compensation at any time or on his own motion or on application. The Secretary, in accordance with the facts found on review, may --

“(1) end decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).<sup>5</sup>

The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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

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<sup>3</sup> In her request, appellant indicated that she should receive 10 percent to her left wrist, the same that she was awarded for the right.

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.608(a) (1999).

Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup>

Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>7</sup>

### ANALYSIS

In support of her request for reconsideration, appellant submitted evidence previously of record. This evidence included copies of the July 25, 2002 report of Dr. Singh and her September 17, 2002 reconsideration request. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup>

Appellant also submitted the December 30, 2002 report of Dr. Muawwad. This report was repetitive of previous reports in that the physician indicated that his prior rating remained.<sup>9</sup> Dr. Muawwad did not provide any relevant or pertinent new evidence which had not previously been considered. Appellant did not submit any other evidence to address the relevant issue in this case of whether she was entitled to an increased schedule award of the left upper extremity. The Board finds that the evidence is not relevant to the underlying issue in the case and does not constitute a basis for reopening a case.<sup>10</sup>

Appellant has failed to show that the Office erred in interpreting the law and regulation governing her entitlement to compensation under the Act and did not advance any relevant legal argument not previously considered by the Office. She failed to submit relevant or pertinent new evidence not previously considered. As appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request on August 22, 2003.<sup>11</sup>

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<sup>6</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999).

<sup>9</sup> *Id.*

<sup>10</sup> *James R. Bell*, 52 ECAB 414 (2001).

<sup>11</sup> *Id.*

**CONCLUSION**

The Board finds that the Office properly denied merit review of appellant's claim on August 22, 2003.<sup>12</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 22, 2003 is hereby affirmed.

Issued: May 6, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> The record contains additional evidence that was submitted after the Office issued its August 22, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 20 C.F.R. § 10.606(b).