

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

BILLY B. SCOLES, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
WARNER ROBINS AIR FORCE BASE, GA,
Employer**

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**Docket No. 05-1696
Issued: December 7, 2005**

Appearances:
Billy B. Scoles, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 4, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated November 2, 2004, which denied his request for reconsideration. Because more than one year has elapsed between the October 3, 2003 merit decision and the filing of this appeal on August 4, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On April 19, 2002 appellant filed an occupational disease claim alleging that he had bilateral carpal tunnel syndrome as a result of his federal employment. On May 16, 2002 the Office accepted appellant's claim for bilateral carpal tunnel syndrome. On August 21, 2003

appellant filed a claim for a schedule award. Based on a July 29, 2003 medical report by Dr. Dalton R. Carpenter, a Board-certified orthopedic surgeon, in a decision dated October 3, 2003, the Office granted a schedule award for a five percent impairment of the left and right arms.

On September 25, 2004 appellant requested reconsideration, contending that he had a greater impairment than that awarded. He submitted a medical report dated April 12, 2004 from Dr. Grady S. Clinkscales, Jr., a Board-certified orthopedic surgeon, who indicated that appellant had a 15 percent impairment of each upper extremity due to a “carpal tunnel problem.”

By decision dated November 2, 2004, the Office denied appellant’s request for reconsideration. The Office noted that, as Dr. Clinkscales did not indicate that the previous impairment was incorrect and did not indicate whether he applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), his opinion was insufficient to require a merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act, the Office’s regulations provide that the application for reconsideration, including all supporting documents, 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 new evidence not previously considered by the Office.¹

ANALYSIS

Appellant does not make any argument that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. However, appellant did submit a new medical report, that of Dr. Clinkscales, which indicated that the appellant had a 15 percent impairment of each upper extremity. The Office denied reopening appellant’s case on the merits based on this report as Dr. Clinkscales did not state that the previous impairment was incorrect and did not indicate that he applied the A.M.A., *Guides*, fifth edition.² However, whether he applied the A.M.A., *Guides* would go to the weight of the evidence, which goes beyond the standard to be applied to reopen a case for further review of the merits. The report of Dr. Clinkscales is relevant, pertinent and new to the issue of the degree of permanent impairment to each upper extremity. The requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge his or her burden of proof. The claimant need only submit evidence that

¹ 20 C.F.R. § 10.606(b)(2)(i-iii).

² 20 C.F.R. § 10.404 (1999). In order to have consistent results and to ensure equal justice under the law to all claimants, the A.M.A., *Guides* have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

is relevant and pertinent and not previously considered.³ Accordingly, the Office should have reviewed appellant's case on the merits and discussed this relevant, new and pertinent evidence.

CONCLUSION

The Board finds that the Office improperly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2004 is set aside and this case remanded for further consideration consistent with this opinion.

Issued: December 7, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

³ See *Sydney W. Anderson*, 53 ECAB 347 (2002).