

FACTUAL HISTORY

On September 30, 1999 appellant, then a 42-year-old mail handler, filed an occupational injury claim alleging that he sustained bilateral carpal tunnel syndrome, bilateral epicondylitis and cervical radiculopathy due to heavy lifting and repetitive bending of his wrists and elbows. The Office accepted his claim for bilateral carpal tunnel syndrome and bilateral epicondylitis on June 14, 2002. The Office denied his claim for a cervical condition.³

On July 25, 2003 appellant filed a claim for a schedule award.

By decision dated April 26, 2004, the Office granted appellant a schedule award for the period March 16 to April 5, 2004, finding a four percent permanent impairment of the right thumb.

Appellant requested reconsideration and submitted additional evidence. He also asserted that the period of the schedule award should have begun on May 7, 2003, his date of maximum medical improvement.

In reports dated June 18, 2004 to April 14, 2005, Dr. Phillip E. Wright, II, an attending orthopedic surgeon, provided findings on physical examination of appellant's upper extremities and reported his course of treatment. A February 15, 2005 report of a nerve conduction study indicated that appellant had mild median nerve peripheral neuropathy of both upper extremities.

By decision dated May 25, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence did warrant further merit review of his claim.⁴

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁵ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] 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

³ The record shows that the Office also accepted bilateral carpal tunnel syndrome in a separate claim and appellant received a schedule award for an eight percent impairment of his left upper extremity. The Office accepted bilateral/lateral epicondylitis in a separate claim but no schedule award was granted for this claim.

⁴ Appellant submitted additional evidence subsequent to the May 25, 2005 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

⁵ 5 U.S.C. § 8128(a).

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁶ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁷

ANALYSIS

Appellant contended that his schedule award granted in the Office’s April 26, 2004 decision should have begun on May 7, 2003, the date of maximum medical improvement, rather than March 16, 2004. However, this allegation does not constitute relevant and pertinent evidence not previously considered by the Office because beginning the period of the schedule award on May 7, 2003 would not change the number of weeks of compensation to which appellant is entitled or result in an additional amount of compensation.⁸

Dr. Wright’s reports dated June 18, 2004 to April 14, 2005 and the February 15, 2005 nerve conduction study report address the condition of appellant’s upper extremities subsequent to the April 26, 2004 schedule award decision. This evidence does not constitute relevant and pertinent evidence not previously considered by the Office because it does not address appellant’s impairment at the time of the April 26, 2004 schedule award decision.⁹

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office. It properly denied his request for further merit review of his claim.

CONCLUSION

The Board finds that the Office properly denied appellant’s request for reconsideration.

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

⁸ The Office noted that appellant received a higher amount of compensation based on the schedule award period beginning on March 16, 2004.

⁹ The Office noted in its May 25, 2005 decision that appellant could file a claim for an increased schedule award based on increased impairment of his accepted conditions which developed subsequent to the April 26, 2004 schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2005 is affirmed.

Issued: December 13, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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