

FACTUAL HISTORY

Appellant, a 38-year-old staff assistant, has an accepted claim for bilateral elbow tendinitis and bilateral de Quervain's tenosynovitis arising on or about March 6, 1998. The Office also authorized surgery for bilateral de Quervain's release, which appellant underwent on July 20, 2001. She received appropriate wage-loss compensation.

On May 20, 2002 appellant filed a claim for a schedule award. She submitted a July 24, 2002 report from Dr. Alan G. Schreiber, a Board-certified orthopedic surgeon, who indicated that maximum medical improvement had been reached and appellant had five percent impairment of both upper extremities due to persistent pain and weakness of the thumbs. On January 16, 2003 the Office requested that Dr. Schreiber prepare an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Dr. Schreiber submitted a February 12, 2003 report explaining that appellant had five percent impairment of both upper extremities due to decreased strength in the musculature of the thumbs and persistent pain. There was no reported loss of range of motion and no sensory deficit. Dr. Schreiber further stated that the upper extremity rating represented six percent whole person impairment under the fourth edition of the A.M.A., *Guides*. The Office medical adviser reviewed the record, including Dr. Schreiber's July 24, 2002 and February 12, 2003 reports, and in an October 24, 2003 report he found there was no evidence to support a rating for permanent impairment due to the accepted condition.

In a decision dated November 19, 2003, the Office denied appellant's claim for a schedule award.

On November 2, 2004 appellant requested reconsideration. She resubmitted Dr. Schreiber's February 12, 2003 report. Appellant also submitted a request for reimbursement for anesthesia services associated with her July 20, 2001 surgery.

By decision dated December 27, 2004, the Office denied appellant's November 2, 2004 request for reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.² Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

Appellant's November 2, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁵

With respect to the third requirement, that the information submitted constitute relevant and pertinent new evidence not previously considered by the Office, appellant resubmitted Dr. Schreiber's February 12, 2003 impairment rating. As this particular report was already of record and previously considered by the Office in its November 19, 2003 decision, appellant's resubmission of the February 12, 2003 report does not constitute a basis for reopening the claim.⁶ The only other evidence submitted with the November 2, 2004 reconsideration request pertained to medical expenses associated with appellant's July 20, 2001 surgery. Appellant's effort to obtain reimbursement for certain medical expenses is not relevant to the issue of whether she has permanent impairment due to her employment-related conditions. Because appellant did not submit any relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).⁷

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied the November 2, 2004 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the merits of her claim.

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ 20 C.F.R. §§ 10.606(b)(2)(i) and (ii) (1999).

⁶ The submission of evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim. *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ 20 C.F.R. § 10.606(b)(2)(iii) (1999).

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board