United States Department of Labor
Employees' Compensation Appeals Board

MARILYN A. COMPONATION, Appellant	)	
and	)	**Docket No. 05-650**
	)	**Issued: June 3, 2005**
DEPARTMENT OF THE AIR FORCE, OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Marilyn A. Componation, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 24, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated March 5, 2004, which denied appellant's request for a merit review.[1] Because more than one year has elapsed between the last merit decision dated September 12, 2003 and the filing of this appeal on January 24, 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, but has jurisdiction over the nonmerit issue.

ISSUE

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

[1] In her appeal request, appellant indicated the date of the decision she was appealing as May 10, 2004. A review of the record does not show any evidence or decisions issued after the March 5, 2004 nonmerit decision.

FACTUAL HISTORY

On February 3, 2003 appellant, a 62-year-old jet engine repairer/sheet metal, filed a traumatic injury claim alleging she injured her right knee on December 16, 2002 when she slipped and fell on some oil. The Office accepted the claim for contusion/chondromalacia of patella bilateral knees. On May 19, 2003 appellant underwent right knee arthroscopy.[2]

On June 25, 2003 appellant filed a schedule award claim. In support of her request, she submitted a June 17, 2003 report by Dr. Robert F. Hines, a treating Board-certified orthopedic surgeon, who stated that he thought appellant had reached maximum medical improvement. He then concluded that she had a 10 percent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides)* (5th ed. 2001).

On July 3, 2003 the Office advised appellant of the need for additional medical evidence. Specifically, the Office requested that appellant submit a physician's opinion regarding whether maximum medical improvement had occurred with a date, a description of the complaints causing the impairment and a recommended impairment rating for the affected member. The Office advised that the impairment rating should be prepared in accordance with the A.M.A., *Guides*.

On August 14, 2003 the Office received progress notes dated May 20 and 27, 2003 by Dr. Hines who reported on May 20, 2003 that appellant was totally disabled and on May 27, 2003 reported she would reach maximum medical improvement within three to six weeks.

By decision dated September 12, 2003, the Office denied appellant's claim on the grounds that the "requirements have not been met for entitlement to a schedule award." Thus, the evidence was insufficient to establish that she sustained permanent impairment to a scheduled member due to the employment injury. The Office suggested that when her physician determined that she had reached maximum medical improvement and replied to the July 3, 2003 letter requesting additional medical evidence, she should then file a claim for a schedule award.

On November 24, 2003 the Office received reports by Dr. Hines dated May 20 and 27, 2003.

Appellant requested reconsideration on January 20, 2004 and resubmitted the June 17, 2003 report by Dr. Hines in support of her request.

By decision dated March 5, 2004, the Office denied a merit review as appellant neither raised substantive legal questions nor included new and relevant evidence.

[2] Appellant received compensation for temporary total disability for the period May 19 to June 13, 2003.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[3] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[4]

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[5] Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[7]

ANALYSIS

Appellant's January 20, 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).[8] Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She resubmitted a number of Dr. Hines' earlier reports dated May 20 and 27 and June 17, 2003. These reports had been previously considered by the Office and thus does not constitute relevant and pertinent new evidence.[9] Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office and, therefore, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).[10] Because appellant was not entitled

[3] 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[4] *Jeffrey M. Sagrecy*, 55 ECAB ___ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

[5] 20 C.F.R. § 10.606(b)(2).

[6] 20 C.F.R. § 10.608(b).

[7] *Annette Louise*, 54 ECAB ___ (Docket No. 03-335, issued August 26, 2003).

[8] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[9] Submitting evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim. *Shirley Rhynes*, 55 ECAB ___ (Docket No. 04-1299, issued September 9, 2004); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

[10] 20 C.F.R. § 10.606(b)(2)(iii).

to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the January 20, 2004 request for reconsideration

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2004 is affirmed

Issued: June 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member