



the Board is the Office's August 10, 2004 decision denying his request for reconsideration. The Board has no jurisdiction to consider the Office's May 14, 2003 schedule award decision.<sup>2</sup>

On February 22, 2000 appellant, then a 39-year-old rural letter carrier, filed a traumatic injury claim alleging that on February 18, 2000 he injured his left elbow when the side door of his vehicle struck his left arm. He did not stop work. The Office accepted his claim for a left elbow contusion and left lateral epicondylitis. Appellant underwent left elbow surgery on February 28, 2001.<sup>3</sup>

On May 14, 2003 appellant was granted a schedule award for 62.04 weeks<sup>4</sup> for the period January 31, 2003 to April 11, 2004 based on a 20 percent impairment of the left upper extremity.<sup>5</sup>

On April 23, 2004 appellant requested reconsideration. He stated, "I am currently still under a physician's care with further treatments possibly necessary.... If you need further documentation please advise." By letter dated May 10, 2004, the Office asked appellant to state the decision and issues for which he was requesting reconsideration.

On June 11, 2004 appellant requested reconsideration and stated, "I want the length of disability to be extended.... I want my impairment rating to be increased."

Appellant submitted medical reports dated September 9, 2003 to July 13, 2004 from Dr. Einbecker who discussed the ongoing treatment for appellant's accepted left elbow condition. He did not address the issue of the degree of appellant's impairment due to his left elbow condition.

By decision dated August 10, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not relevant, was repetitious and failed to address the issue of the percentage of impairment of his left elbow.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on his own motion or on

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<sup>2</sup> *Algimantas Bumelis*, 48 ECAB 679 (1997).

<sup>3</sup> Appellant received compensation for temporary total disability for the period February 27 to June 11, 2001 (the day prior to his surgery to the day he returned to restricted-duty work).

<sup>4</sup> The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the arm. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by a 20 percent impairment equals 62.04 weeks of compensation.

<sup>5</sup> On January 31, 2003 Dr. Mark E. Einbecker, appellant's attending orthopedic surgeon, determined that appellant had a 20 percent impairment of the left upper extremity and indicated that he had reached maximum medical improvement on that date. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. *Yolanda Librera*, (*Michael Librera*), 37 ECAB 388 (1986).

application. The Secretary, in accordance with the facts on review, may end, decrease, or increase the compensation previously awarded; or award compensation previously refused or discontinued.<sup>6</sup>

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) constituting relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.<sup>9</sup>

### ANALYSIS

In support of his reconsideration request, appellant submitted several medical reports. However, these reports did not address the issue of his percentage of impairment causally related to his accepted left elbow condition. Because this evidence did not indicate any error in the May 14, 2003 schedule award decision based on a 20 percent impairment, it did not constitute relevant and pertinent evidence not previously considered by the Office and was insufficient to warrant further merit review.

Appellant also indicated that he wanted “the length of [his] disability to be extended.” It appears that appellant meant to contest the 62.04-week period of the schedule award, January 31, 2003 to April 11, 2004. As noted above, the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury, in this case, January 31, 2003, as determined by appellant’s physician. The period of appellant’s schedule award ends on April 11, 2004, at the conclusion of the 62.04 weeks of compensation due him for his 20 percent impairment. The medical reports appellant submitted do not indicate any additional left elbow impairment. Therefore, he has not submitted any relevant and pertinent evidence not previously considered by the Office indicating that he is entitled to more than the 62.04 weeks of compensation granted in the May 14, 2003 schedule award.

As 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, the Office properly denied his request for reconsideration.

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> 20 C.F.R. § 10.608(b).

**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 August 10, 2004 is affirmed.

Issued: March 17, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member