United States Department of Labor
Employees' Compensation Appeals Board

ALEXANDER J. DEGENNARO, Appellant	)	
and	)	**Docket No. 05-186**
	)	**Issued: May 16, 2005**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
Alexander J. Degennaro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 25, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated September 3, 2004. Pursuant to its regulations, the Board has jurisdiction over this nonmerit decision.[1] Because more than one year has elapsed between the Office's last merit decision dated November 14, 2002 and the filing of this appeal on October 25, 2004, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On September 29, 1995 appellant, a 47-year-old internal revenue agent, filed a traumatic injury claim alleging that he tripped over a curb in a parking lot of a restaurant on September 28, 1995 and fell on his right shoulder and right hip, and lacerated his right knee. The Office accepted that appellant sustained a fracture of the right proximal humerus. His treating physician, Dr. Richard D. Hindes, a Board-certified orthopedist, opined that he had a 40 percent permanent impairment of his right shoulder. Dr. Hindes did not provide references to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, and did not explain how he calculated a 40 percent impairment of appellant's right upper extremity. However, the Office medical adviser recalculated appellant's physician's findings and determined that he was only entitled to a nine percent schedule award.

By an award of compensation dated November 14, 2002, the Office granted appellant a schedule award for a 9 percent impairment of his right upper extremity for the period April 26 to November 8, 1996 for a total of 28.08 weeks of compensation.

Thereafter appellant submitted copies of pages from the A.M.A., *Guides* (5th ed. 2001) which discussed generally the rating process for upper extremity impairment. He also resubmitted a copy of Dr. Hindes' January 8, 2002 report. Other reports previously of record and considered by the Office were also resubmitted. Appellant also provided argument that his impairment was greater than that compensated.

On June 3, 2004 appellant requested reconsideration of the November 14, 2002 decision awarding him a schedule award for a nine percent impairment of the right upper extremity. He quoted the Office's statement noting that he originally requested reconsideration by letter received on October 14, 2003. Appellant stated that he did not believe that the Office medical adviser should be able to determine his percentage of loss using estimates, but that his treating physician was in the best position to provide a permanent impairment rating. Appellant argued that he had greater impairment than that compensated.

By letter dated May 24, 2004, the Office requested that appellant clarify what avenue he wanted to take with his appeal rights, reconsideration by the Office, a request for an oral hearing, a review of the written record, or an appeal to the Board. Appellant clarified his request by stating that he sought reconsideration of the schedule award by the Office.

By decision dated September 3, 2004, the Office denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[2] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not

[2] 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, "[t]he Secretary of labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

previously considered by the Office; or (3) provide relevant and pertinent new evidence that was not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for further review on the merits.[5]

Additionally, the submission of duplicate medical evidence previously considered does not constitute a basis for reopening a claim.[6] Evidence, such as medical texts, must be specific to appellant rather than general in nature or of general application, and do not constitute new evidence sufficient to reopen a claim for further review of the merits.[7]

ANALYSIS

In support of appellant's reconsideration request, he submitted duplicate copies of reports, including those of Dr. Hindes, which were previously submitted and considered by the Board. These reports were duplicate medical evidence previously considered and, therefore, they did not constitute a basis for reopening a claim for further review on its merits.[8]

Further appellant submitted page copies and excerpts from the A.M.A., *Guides*, containing tables and rating charts. The Board has frequently explained that excerpts from all publications, medical texts, newspaper clippings, circulars, brochures, patient hand-outs, instructional material, *etc.*, are of no evidentiary value as they are of general application and are not determinative as to whether a specific condition is related to a particular employment factor.[9] Therefore, as this evidence is general in nature and not specific to appellant, it does not warrant merit review.

Appellant contended that the Office medical adviser's opinion should not have been used as a basis for his schedule award as Dr. Hindes knew his condition better than the Office medical adviser. However, he has presented no evidence or legal argument to show why this was error on the part of the Office in issuing the schedule award.

[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.607(a).

[5] 20 C.F.R. § 10.608(b).

[6] *W.H. Van Kirk*, 28 ECAB 542 (1977).

[7] *See Durwood H. Nolin*, 46 ECAB 818 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[8] *Supra* note 6.

[9] *See William C. Bush*, 40 ECAB 1064 (1989).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member