United States Department of Labor
Employees' Compensation Appeals Board

TYRONE E. MURRAY, SR., Appellant	)	
and	)	**Docket No. 05-1019**
	)	**Issued: April 6, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

Appearances:
Tyrone E. Murray, Sr., pro se
Thomas G. Giblin, Esq., for the Director

Oral Argument March 15, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 28, 2005 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs dated December 27, 2004 that denied his request for reconsideration of a schedule award. As the most recent merit decision regarding appellant's schedule award was issued on November 2, 1999 the Board lacks jurisdiction to review the merits of this case, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.[1]

ISSUE

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

[1] Section 501.3(d)(2) of the Board's *Rules of Procedure* requires that an appeal be filed no later than one year after the date of issuance of the Office's decision.

FACTUAL HISTORY

On March 18, 1992 appellant, then a 36-year-old modified distribution clerk, filed a claim for compensation for an occupational disease of his thumb, elbow and shoulder that he attributed to filing mail. The Office accepted that he sustained de Quervain's tendinitis of the right wrist, lateral epicondylitis of the right elbow and subacromial bursitis of the right shoulder. The Office authorized decompression surgery for appellant's right shoulder which was performed on December 16, 1993 by Dr. Leslie S. Matthews, a Board-certified orthopedic surgeon.

Appellant filed a claim for a schedule award and, on April 25, 1997, the Office granted a schedule award for a 12 percent impairment of his right arm. The award was based on losses of motion of his right shoulder as reported by Dr. Matthews in a July 24, 1996 report. Appellant requested reconsideration of this decision and submitted an August 6, 1999 report from Dr. Matthew noting an 18 percent impairment of his right arm due to restricted motion, pain and weakness of his right shoulder. An Office medical adviser reviewed this report and stated that it showed a 20 percent impairment of appellant's right arm. On November 2, 1999 the Office issued a schedule award for an additional 8 percent impairment of his right arm, for a total of 20 percent.

By letter dated September 27, 2000, appellant requested reconsideration of the Office's November 2, 1999 decision, stating that on September 18, 2000 Dr. Matthews said that a hand specialist should rate his impairment due to the right lateral epicondylitis and de Quervain's syndrome. He contended that he was entitled to have an evaluation of such impairments performed at the Office's expense. In October 18, 2000 and August 22, 2001 letters, appellant inquired about the status of his reconsideration request. On March 19, 2002 he again inquired about his request for reconsideration, again contending that the Office should authorize an examination to determine the impairment of his right arm due to the accepted lateral epicondylitis and de Quervain's syndrome.

By decision dated July 8, 2002, the Office found that appellant's request for reconsideration was not timely filed and did not demonstrate clear evidence of error. He appealed this decision to the Board, which by order dated November 26, 2002, remanded the case to the Office for completion of the case record and issuance of an appropriate decision addressing his request for reconsideration.[2] By decision dated March 21, 2003, the Office found that his request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

Appellant appealed this decision to the Board and the Director of the Office filed a motion to remand the case for proper review of appellant's request for reconsideration, which the Director conceded was timely. By order dated October 29, 2004, the Board granted the Director's motion to remand.[3]

[2] Docket No. 02-2183 (issued November 26, 2002).

[3] Docket No. 03-1397 (issued October 29, 2004).

By decision dated December 27, 2004, the Office refused to reopen appellant's case for further review of the merits of his claim, finding that he had not shown that the Office erroneously applied or interpreted a specific point of law, he had not advanced a legal argument not previously considered by the Office and he had not submitted relevant and pertinent evidence not previously considered by the Office.

LEGAL PRECEDENT

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

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his 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
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

ANALYSIS

Appellant submitted a timely request for reconsideration of the Office's November 2, 1999 decision on September 27, 2000.[4] This request for reconsideration was not accompanied by any evidence not previously considered by the Office. Appellant's statement that Dr. Matthews said his impairment of the elbow and wrist should be evaluated by a hand specialist is not competent medical evidence[5] and thus, is not relevant and pertinent new evidence relating to the question of whether he has more than a 20 percent impairment of the right arm.

Appellant also did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the

[4] Appellant's September 27, 2000 letter was properly considered a request for reconsideration, as he was asserting that the Office's schedule award was erroneous based on his condition at that time. He was not asserting that new exposure to employment factors or a progression of an employment-related condition resulted in a greater impairment. *See Candace A. Karkoff*, 56 ECAB ___ (Docket No. 05-677, issued July 13, 2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b (August 2002).

[5] Oral statements by a physician to a layman do not constitute competent medical evidence. *Paul W. Kirby*, 20 ECAB 304 (1969).

Office. He argued that the Office should authorize an evaluation at its expense of any impairment of his right arm due to the accepted conditions of lateral epicondylitis and de Quervain's syndrome. Appellant, however, has the burden of proving impairment greater than that awarded by the Office.[6] His attending physician did the evaluations of his shoulder that resulted in his schedule award, has not made a showing that the Office is required to further develop the evidence when, as here, there is no medical evidence that the other accepted conditions resulted in any impairment of the scheduled member.[7] Appellant's argument that the Office has such a duty does not show the Office erroneously applied or interpreted a specific point of law, nor does it constitute a relevant legal argument.[8]

CONCLUSION

The Office properly refused to reopen appellant's case for further review of the merits of his claim.

ORDER

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

Issued: April 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[6] *James Robinson, Jr.*, 53 ECAB 417 (2002).

[7] The case of *Tonya D. Bell*, 43 ECAB 845 (1992), which appellant cited for the proposition that the Office is required to develop the medical evidence in a schedule award case, does not support such a broad thesis. In *Bell*, unlike the present case, there was medical evidence that the permanent impairment to the finger extended to the hand and the Board remanded the case to the Office for further development on that issue.

[8] To require that the Office reopen the case for a merit review, the legal contention on reconsideration must have a reasonable color of validity. *Constance G. Mills*, 40 ECAB 317 (1988).