

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mexico, MO, Employer**

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**Docket No. 06-1658
Issued: December 8, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On July 17, 2006 appellant filed a timely appeal from a January 23, 2006 Office of Workers' Compensation Programs' nonmerit decision, denying her request for reconsideration of her claim for a schedule award. The Board's jurisdiction to consider final decisions of the Office extends only to final decisions issued within one year prior to the filing of the appeal.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of the claim.²

ISSUE

The issue is whether the Office abused its discretion in denying appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *See Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley*, 41 ECAB 104 (1989).

FACTUAL HISTORY

On December 16, 1997 appellant, then a 38-year-old part-time flexible clerk, filed a traumatic injury claim alleging that she injured her right shoulder while sorting packages. The Office accepted her claim for right shoulder rotator cuff tendinitis and a right cervical strain. On February 7, 2002 appellant underwent surgery consisting of arthroscopy of the right shoulder with subacromial decompression and a repair of a supraspinatus rotator cuff tendon tear. On January 7, 2003 she filed a claim for a schedule award.

By decision dated September 16, 2003, the Office granted appellant a schedule award for 12.48 weeks based on a four percent permanent impairment of the right upper extremity.

By decision dated September 14, 2004, an Office hearing representative affirmed the September 16, 2003 decision.

Appellant requested reconsideration and submitted additional evidence. In an October 22, 2004 report, Dr. Patrick A. Smith, an attending orthopedic surgeon, provided findings on physical examination. He indicated that she had a nine percent impairment of the right upper extremity based on loss of range of motion. An Office medical adviser reviewed Dr. Smith's report and stated that it was not sufficient for schedule award purposes because it was incomplete, containing only range of motion measurements.

By decision dated April 22, 2005, the Office denied modification of the September 14, 2004 decision.

On December 12, 2005 appellant requested reconsideration. She did not submit any additional evidence.³

By decision dated January 23, 2006, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] 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

³ Appellant indicated that she was requesting reconsideration based on an “attached report.” However, no report was submitted with the reconsideration letter.

⁴ 5 U.S.C. § 8128(a).

(2) award compensation previously refused or discontinued.”

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) submitting relevant and pertinent evidence not previously considered by the Office.⁵ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

ANALYSIS

The merits of the Office’s schedule award decision are not within the jurisdiction of the Board on this appeal. Therefore, the only issue on appeal is whether appellant submitted evidence or argument sufficient to warrant further merit review.

Appellant did not submit any additional evidence or legal argument when she submitted her December 12, 2005 reconsideration request, nor did she allege that the Office erroneously applied or interpreted a specific point of law. Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her claim.

On appeal, appellant argues that her schedule award should be increased based on the October 22, 2004 report of Dr. Smith. However, this report was submitted prior to the last merit decision issued by the Office on April 22, 2005. As noted, the merits of the schedule award decision are not within the Board’s jurisdiction. Appellant’s argument does not establish that the Office abused its discretion in denying her request for reconsideration in its January 23, 2006 decision.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant’s request for reconsideration.

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2006 is affirmed.

Issued: December 8, 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