

flexor tendon reconstruction of the right ring finger. Appellant stopped work on April 1, 1997 and returned to full-time duty on May 12, 1997. On October 14, 1997 he underwent surgery, a stage 2 reconstruction of the flexor tendon of the right ring finger. On February 9, 1998 he returned to work full time without restrictions.

Appellant initially came under the treatment of Dr. David Kirschenbaum, a Board-certified orthopedic surgeon, who noted a history of appellant's work-related injury, his surgeries and his postsurgery recovery. On November 17, 1999 appellant filed a claim for a schedule award. He submitted a report from Dr. Jack Haberman, an internist, who stated that appellant sustained a 41 percent permanent impairment of the right upper extremity. In a report dated February 18, 2000, an Office medical adviser concurred with Dr. Haberman's schedule award determination.

By a decision dated March 2, 2000, the Office granted appellant a schedule award for 41 percent permanent impairment of the right hand. The period of the award was from July 21, 1999 to June 21, 2001, for 100.04 weeks of compensation. On July 18, 2000 appellant requested an oral hearing before an Office hearing representative.

In a decision dated July 22, 2000, the Office set aside the schedule award and remanded the case for further development. The hearing representative noted that Dr. Haberman and the medical adviser found 41 percent permanent impairment of the right upper extremity; however, the Office granted appellant a schedule award impairment of the right hand. The hearing representative noted the discrepancy as to whether the impairment was to the right hand or right upper extremity. In a report dated August 11, 2000, the medical adviser determined that appellant sustained a 38 percent permanent impairment of the right upper extremity. In a decision dated September 6, 2000, the Office granted appellant a 38 percent impairment of the right upper extremity. The period of the award was from July 21, 1999 to October 27, 2001, for 118.56 weeks of compensation.

On February 22, 2001 appellant filed a claim for a schedule award for his right ankle. He experienced pain and stiffness of his right ankle due to the October 1997 surgical removal of a donor tendon for his right ring finger. Appellant also experienced a right lower extremity injury in September 2000 at the location of the graft site causing a tear of the medial meniscus. He submitted a report from Dr. David Weiss, an osteopath, dated December 20, 2000. Dr. Weiss opined that appellant sustained a 40 percent permanent impairment of his right lower extremity. A magnetic resonance imaging (MRI) scan of the right ankle dated March 24, 2001 revealed an old anterior talofibular ligament, medial collateral ligament sprain and degeneration within the Achilles tendon. An MRI scan of the right knee dated November 14, 2001 revealed a tear involving the posterior horn of the medial meniscus.

In a report dated April 15, 2002, the medical adviser opined that there was no evidence to suggest that the torn meniscus of the right knee was secondary to a tendon graft. Appellant was referred for a second opinion examination by Dr. David Rubinfeld, a Board-certified orthopedic surgeon, who opined in a report dated May 29, 2002 that the medical evidence did not support that the torn medial meniscus of the right knee and or the right ankle condition were caused, aggravated or precipitated by use of the right calf and ankle to repair the tendon of the right finger.

By decision dated June 27, 2002, the Office denied appellant's request for surgery for the right knee on the grounds that the evidence of record did not establish that there was a causal connection between the requested surgery and the work-related injury of November 29, 1996.

In a letter dated July 2, 2002, appellant requested an oral hearing before an Office hearing representative. The hearing was held on June 18, 2003. In an October 28, 2001 report, Dr. Kirschenbaum diagnosed right carpal tunnel syndrome and opined that this condition was related to appellant's repetitive work duties and the multiple surgeries on his flexor tendons. In a June 27, 2003 report, Dr. Michael J. Simon, a Board-certified orthopedic surgeon, noted a history of appellant's work injury of November 29, 1996 and advised that he had a ligament removed from his right ankle and grafted to his right hand. Dr. Simon advised that, subsequent to the injury, appellant experienced discomfort in his hand and ankle and fell down stairs in September 2000 because he was unable to bear weight on his right leg. This resulted in a knee injury. Dr. Simon diagnosed a torn medial meniscus and onychomycosis.

In a decision dated September 12, 2003, the hearing representative affirmed the June 27, 2002 decision. The hearing representative found that the medical evidence was insufficient to establish that appellant's right knee condition was a consequence of the accepted work injury.

By letter dated August 4, 2004, appellant requested reconsideration and submitted a report from Dr. Weiss. Appellant asserted that his right knee injury and subsequent surgery should be accepted as a consequential injury to the accepted right finger injury. In a May 24, 2004 report, Dr. Weiss opined that appellant reached maximum medical improvement with regard to his right ankle. Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)¹ he sustained a 39 percent permanent impairment of his right lower extremity.² Dr. Weiss opined that the work-related injury of November 29, 1996 was the competent producing factor for appellant's subjective and objective findings with regard to his right lower extremity.

By decision dated November 4, 2004, the Office denied modification of the September 12, 2003 decision.

In a memorandum dated February 16, 2005, the Office requested that the Office medical adviser review Dr. Weiss' March 20, 2004 report and determine the extent of permanent impairment to appellant's right ankle due to the surgical procedure to repair the right hand. In a report dated March 9, 2005, the medical adviser noted that appellant sustained a 12 percent

¹ A.M.A., *Guides* (5th ed. 2001).

² *See id.* at 532, Table 17-8.

impairment for dorsiflexion weakness of the right ankle, Grade 4;³ a 17 percent impairment for plantar flexion weakness of the right ankle, Grade 4;⁴ and 12 percent impairment for inversion weakness of the right ankle, Grade 3⁵ and 3 percent impairment for pain.⁶

By compensation award dated March 31, 2005, the Office granted appellant a schedule award for 39 percent permanent impairment of the right lower extremity.⁷

By letter dated June 21, 2005, appellant requested reconsideration of the Office's decision dated November 4, 2004 and submitted additional medical evidence. Appellant submitted a report from Dr. Simon dated June 7, 2005, who noted a history of appellant's work injury of November 29, 1996. Dr. Simon opined that subsequent to the injury appellant experienced discomfort in his hand and ankle and in September 2000 fell down stairs because he was unable to bear weight on his right leg. He opined to a reasonable degree of medical certainty that appellant's knee injury resulted from the "circumstances preceding" and "relate back" to the hand injury requiring a ligament from the right ankle.

By decision dated August 15, 2005, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,⁸ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 574, Table 18-1.

⁷ Appellant, through his attorney, indicated that no appeal was sought with regard to the schedule award decision.

⁸ 5 U.S.C. § 8128(a).

regulations,⁹ which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) [s]hows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) [a]dvances a relevant legal argument not previously considered by the [Office]; or

“(iii) [c]onstitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁰

ANALYSIS

Appellant’s June 21, 2005 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.

Appellant asserted that Dr. Simon’s report of June 7, 2005 was sufficient to establish that he sustained a consequential right knee injury which was causally related to his initial hand surgery and right ankle reconstruction. However, his letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office had previously considered appellant’s contentions about whether his leg conditions were consequential to his accepted hand injury. Appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, Dr. Simon’s June 7, 2005 report is new. However, this report is not relevant as it is similar to Dr. Simon’s previously submitted report dated June 27, 2003, which was considered by the Office in its decision dated September 12, 2003. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ Therefore, this report is insufficient to require the Office to reopen the claim for a merit review.

⁹ 20 C.F.R. § 10.606(b).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office.¹² Consequently, appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

On appeal, appellant asserts that there is sufficient medical evidence to establish a consequential injury to the right knee and that the decision of the Office dated November 15, 2004 should be reversed. As noted above, because more than one year has elapsed between the most recent merit decision dated November 4, 2004, which denied appellant's claim for a consequential injury to the right knee and the filing of this appeal on November 21, 2005, the Board lacks jurisdiction to review the merits of appellant's claim.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 15, 2005 is affirmed.

Issued: November 2, 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

¹² See *supra* note 9.