



## **FACTUAL HISTORY**

On April 27, 1979 appellant, then a 40-year-old food service worker, filed a traumatic injury claim, alleging that she injured her knees during the course of her federal employment. Her claim was accepted for dislocation of the left knee and osteoarthritis of the right knee. Appellant underwent authorized total right knee replacement surgery on August 18, 2004.

On April 11, 1996 appellant received a schedule award for a 50 percent permanent impairment of her left lower extremity. The period of the award was from March 19 to August 7, 1996. On November 3, 1998 the Office granted appellant a schedule award for a 50 percent impairment of the right leg. The award was for the period August 21, 1998 through May 24, 2001. On February 7, 2000 appellant was granted an additional schedule award for a 25 percent impairment of the left lower extremity, for a total impairment rating of 75 percent.

On October 27, 2004 appellant requested an increased schedule award pursuant to right knee impairment. In a report dated February 21, 2005, appellant's physician, Dr. M.F. Longnecker, a Board-certified orthopedic surgeon, recommended a total impairment rating of the right lower extremity of 75 percent. He noted that there was no additional impairment of function due to weakness, atrophy, pain or discomfort, which had been estimated at 45 percent of the lower extremity. After reviewing Dr. Longnecker's report, on February 16, 2005 the district medical adviser concluded that appellant had a total right lower extremity impairment of 75 percent, pursuant to Tables 17-33 and 17-35 at pages 547 and 549 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed.), for a 25 percent increase. On July 27, 2005 the Office granted appellant a schedule award for an additional 25 percent impairment of the right lower extremity. The award was for the period February 16, 2005 through July 4, 2006.

On July 30, 2005 appellant requested review of the written record. By decision dated December 22, 2005, an Office hearing representative affirmed the July 27, 2005 decision.

On July 7, 2006 appellant requested reconsideration of the December 22, 2005 decision. She stated, "There is no additional evidence to be submitted but this request is HOW, WHEN AND WHERE the process by which the A.M.A. *Guides* is use[d] in allowing or disallowing abnormalities derive[d] from traumatic injury." Appellant indicated that her operation eliminated pain but restricted her mobility and decreased stability in her right leg. She noted that she is dependent on others to clean her home, shop and prepare food. Appellant raised concerns about her total disability. On October 13, 2006 she submitted a follow-up letter repeating the statements made in her July 7, 2006 letter. On November 30, 2006 appellant submitted a letter requesting information as to the status of her request for reconsideration.

By decision dated December 8, 2006, the Office denied appellant's request for reconsideration on the grounds that she had failed to raise a substantive legal question and had not presented new and relevant evidence.

### LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

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

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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

### ANALYSIS

Appellant's July 7, 2006 reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant merely expressed her disagreement with the process used to determine the degree of her permanent impairment, as well as the conclusion reached, based on her restricted mobility and decreased stability.<sup>5</sup> Her lay opinion is not relevant, as the Board has held that lay individuals are not competent to render a medical opinion.<sup>6</sup> The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> 20 C.F.R. § 10.608(b).

<sup>4</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>5</sup> The amount payable under a schedule award does not take into account the effect the impairment may have on sports, hobbies or lifestyle activities. See *Ruben Franco*, 54 ECAB 496 (2003).

<sup>6</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

Appellant also failed to meet the third requirement of submitting relevant and pertinent new evidence. She did not submit any new evidence in support of her request for reconsideration, with the exception of her letters dated October 13 and November 30, 2006, wherein she repeated contentions made in her July 7, 2006 letter. The Board has held that submission of duplicative or repetitious evidence is insufficient to require the Office to reopen a case for merit review.<sup>7</sup>

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her July 7, 2006 request for reconsideration.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> *Id.*