



accepted her claim for bilateral carpal tunnel syndrome. On August 26, 2004 appellant filed a claim for a schedule award.

In a medical report dated January 12, 2005, Dr. Paul G. Jones, a Board-certified orthopedic surgeon, listed appellant's diagnosis as "status post bilateral carpal tunnel release." He noted that appellant indicated that she was still under active treatment and, for this reason, "a schedule loss of use and permanent impairment is not yet possible."

By decision dated May 6, 2005, the Office denied appellant's claim for a schedule award for the reason that the evidence was not sufficient to establish that appellant sustained a permanent impairment to a scheduled member due to her accepted work injury.

On June 2, 2005 appellant requested reconsideration. By letter received by the Office on June 24, 2005, appellant requested authorization for an appointment with Dr. Robert Bibi, a Board-certified plastic surgeon specializing in surgery of the hand, who performed the surgery on her right and left hand. On July 29, 2005 the Office authorized appellant to change her treating physician to Dr. Bibi and indicated that a complete report by Dr. Bibi should be submitted. A note from appellant dated November 1, 2005 stated that the Office should have received a letter from Dr. Bibi that she had reached permanent impairment for both of her hands.

By decision dated January 4, 2006, the Office denied appellant's application for review without reviewing the merits of the case. The Office noted that, although appellant indicated that Dr. Bibi had submitted a report with regard to her impairment, no such report was in fact submitted. The evidence was immaterial and not relevant to the issue at hand.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>1</sup>

### **ANALYSIS**

In a merit decision dated May 6, 2005, the Office denied appellant's claim for a schedule award for the reason that the evidence was not sufficient to establish that appellant sustained a permanent impairment to a schedule member due to her accepted injury. Appellant submitted no new medical evidence on reconsideration. Although she alleged on reconsideration that Dr. Bibi submitted a new report regarding her impairment, no such report appears in the record. Appellant's request for reconsideration 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. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a review of the merits of

---

<sup>1</sup> 20 C.F.R. § 10.606(b)(2)(i-iii).

her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.<sup>2</sup>

**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 decision of the Office of Workers' Compensation Programs dated January 4, 2006 is affirmed.

Issued: June 21, 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

---

<sup>2</sup> Appellant submitted additional evidence after the Office's January 4, 2006 decision. However, the Board cannot consider new evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence and legal contentions to the Office with a request for reconsideration.