United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 07-1177**
	)	**Issued: September 19, 2007**
DEPARTMENT OF THE ARMY, CIVILIAN PERSONNEL ADVISORY CENTER, Fort Knox, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 28, 2007 appellant filed a timely appeal from a September 8, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. As the last merit decision by the Office was issued more than one year from the filing date of this appeal, the Board has no jurisdiction to review the merits of this case.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration of her claim under 5 U.S.C. § 8128.

[1] 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On February 12, 2003 appellant, then a 59-year-old retired employee, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to factors of her federal employment. She retired in 1984. On October 25, 1982 appellant underwent a right carpal tunnel release.

The Office accepted the claim for bilateral carpal tunnel syndrome. In a decision dated June 4, 2003, the Office granted appellant a schedule award for a 15 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity. The period of the award ran for 78 weeks from April 11, 2003 to October 7, 2004.

On January 5, 2005 appellant filed a claim for an increased schedule award. By decision dated February 14, 2005, the Office denied her claim on the grounds that the medical evidence did not establish an increase in impairment to either her right or left upper extremity.

On March 18, 2005 the Office requested that Dr. Cheng Rolando, a Board-certified orthopedic surgeon, provide an opinion on the extent of appellant's permanent impairment of the upper extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). John K. Graehler, a physical therapist, provided an impairment determination for Dr. Rolando on June 21, 2005. He opined that appellant had a 30 percent permanent impairment of the right hand or a 27 percent impairment of the right upper extremity. Mr. Graehler did not cite to the A.M.A., *Guides* in reaching his conclusion.

Appellant requested reconsideration on September 17, 2005. An Office medical adviser reviewed the evidence and determined that she had an additional five percent impairment of the right upper extremity. In a decision dated December 8, 2005, the Office granted appellant a schedule award for an additional five percent right arm impairment. The Office noted in its decision that the Office medical adviser's report was the only medical evidence which referenced the A.M.A., *Guides*.

On August 30, 2006 appellant requested reconsideration. She submitted Mr. Graehler's June 21, 2005 report with citations to the A.M.A., *Guides*. Appellant also resubmitted March 18, May 27 and August 26, 2005 reports from Dr. Cheng, a September 16, 2004 electromyogram and a December 13, 2004 physical therapy report. In a December 3, 2004 report, Dr. M.I. Malik, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome.

By decision dated September 8, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review of the claim. The Office determined that the evidence submitted was repetitious in nature.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[5]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[8]

ANALYSIS

In its December 8, 2005 decision, the Office determined that appellant was entitled to a schedule award for an additional five percent permanent impairment of the right upper extremity. The Office relied upon the opinion of the Office medical adviser, who applied the A.M.A., *Guides* to the June 21, 2005 findings of Mr. Graehler, a physical therapist. The Office noted that the physical therapist did not refer to the tables and pages of the A.M.A., *Guides* in his report.

With her request for reconsideration, appellant submitted a duplicate of the June 21, 2005 physical therapist's report with the addition of references to the A.M.A., *Guides*. She contended that this report established that she was entitled to an additional schedule award. The Board finds, however, that Mr. Graehler's report does not constitute competent medical evidence as a

[2] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application."

[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.607(a).

[5] 20 C.F.R. § 10.608(b).

[6] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[8] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

physical therapist is not a "physician" under the Act.[9] Thus, his report is not relevant to the medical issue of the extent of appellant's bilateral upper extremity impairment.

Appellant further resubmitted reports from Dr. Cheng dated March 18, May 27 and August 26, 2005, an electromyogram dated September 16, 2004 and a physical therapy report dated December 13, 2004. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10]

In a report dated December 3, 2004, Dr. Malik diagnosed carpal tunnel syndrome. He did not, however, address the extent of any permanent impairment of the upper extremities and thus his report is not pertinent to the issue at hand. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.[11]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for merit review of her claim under section 8128 of the Act.

ORDER

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

Issued: September 19, 2007
Washington, DC

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

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

[9] 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357.

[10] *Richard Yadron*, 57 ECAB ___ (Docket No. 05-1738, issued November 8, 2005).

[11] *Freddie Mosley*, 54 ECAB 255 (2002).