United States Department of Labor
Employees' Compensation Appeals Board

F.W., Appellant	)	
and	)	**Docket No. 08-66**
	)	**Issued: April 24, 2008**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument March 19, 2008

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 9, 2007 appellant filed a timely appeal of a July 18, 2007 decision of the Office of Workers' Compensation Programs, denying further merit review of her claim. Since more than one year has elapsed between the last merit decision on June 21, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2 (c), 501.3(d)(2) and 501.6(c) and (d).

ISSUE

The issue is whether the Office properly determined that appellant's March 26, 2007 application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

FACTUAL HISTORY

Appellant filed a claim alleging that she sustained an injury on May 4, 1987 unloading a wagon full of controls. The claim was accepted for vaginal prolapse, aggravation of cystourethrocele and rectocele, vaginitis and vulvovaginitis.[1]

Appellant submitted a September 12, 2005 report from Dr. John Ellis, a Board-certified family practitioner, who opined that appellant had a permanent impairment to her uterus, ovaries, vagina, rectum, colon, intestines and bladder. The Office referred appellant to Dr. Paul Jennings, an obstetrician/gynecologist, for a second opinion examination. In a report dated May 19, 2006, Dr. Jennings provided a history and results on examination. He provided whole person impairments based on the impairment criteria in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fifth edition) for bladder disease, vulval and vaginal disease, uterine and cervical disease, fallopian tube and ovarian disease, as well as colon and rectal disorders. An Office medical adviser reviewed the evidence from Dr. Jennings and opined in a June 21, 2006 report that appellant had a 71 percent permanent impairment of the vagina.

By decision dated June 21, 2006, the Office issued a schedule award for a 71 percent permanent impairment of the vagina. The period of the award was 145.55 weeks commencing May 19, 2006. The compensation rate was 66 and 2/3 percent of weekly pay.

By letter dated March 26, 2007, appellant requested reconsideration of her claim. She alleged that the vaginal impairment should be based on a 35 percent whole person impairment. Appellant also indicated that Dr. Jennings and Dr. Ellis had discussed other members of the body and had provided impairment ratings, but the schedule award did not include these members. In addition, she argued that she should have received a compensation rate of three fourths of her weekly pay, as there was a delay in accepting her claim and she would have had a dependent if her claim had been paid in a timely manner.

With respect to the medical evidence, appellant submitted a November 29, 2005 report from Dr. Cary Lacefield, a family practitioner, who indicated that on March 27, 2001 he had diagnosed rectocele and cystocele, and appellant would likely need surgery in the future. Dr. Lacefield also stated that appellant's injuries had altered her life with its physical limitations and there was additional emotional suffering in having to discuss these private matters. Appellant submitted medical evidence previously of record, including reports from October 2004 from Dr. Stanley Chard and the reports from Dr. Ellis and Dr. Jennings.

By decision dated July 18, 2007, the Office denied the reconsideration without reviewing the merits of the claim. The Office found that the evidence and argument submitted were not sufficient to warrant further merit review.

[1] Appellant also filed a claim for injury for January 29, 1988, which was accepted for partial vaginal prolapse and vaginal enterocele.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[2]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.[3]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[4]

ANALYSIS

Appellant submitted an application for reconsideration of the June 21, 2006 schedule award decision for a 71 percent permanent impairment of the vagina. The application for reconsideration noted that the medical evidence, including the second opinion report from Dr. Jennings, discussed impairments to other scheduled organs of the body, such as the kidney, uterus and ovaries. This is not a relevant argument with respect to the June 21, 2006 decision, as this was limited to an impairment to the vagina.[5]

In her application for reconsideration, appellant also argued that she was entitled to more than a 71 percent schedule award for permanent impairment to the vagina. This is a medical issue, and must be addressed by medical evidence. Dr. Jennings reported a 25 percent whole person impairment based on vaginal disease and the Office medical adviser indicated this was a 71 percent impairment. Appellant did not submit any new or relevant medical evidence on the issue. The only new medical report was from Dr. Lacefield, who did not discuss the degree of permanent impairment to the vagina under the A.M.A., *Guides.*

[2] 20 C.F.R. § 10.605 (1999).

[3] *Id*. at § 10.606.

[4] *Id*. at § 10.608.

[5] Appellant is not precluded from pursuing a claim for a schedule award involving other scheduled members, organs or functions of the body.

The remaining argument raised by appellant concerned an augmented compensation rate. She argued that, if her claim had been accepted earlier, her deceased spouse would have been an eligible dependent. The period covered by a schedule award begins on the date the employee reaches maximum medical improvement from residuals of the employment injury.[6] The schedule award in this case commenced on May 19, 2006, the date of maximum medical improvement. Appellant did not submit any evidence or argument to support that on that date she had a dependent that would entitle her to an augmented compensation rate under 5 U.S.C. § 8110.

The Board accordingly finds the application for reconsideration and the evidence submitted were not sufficient to require merit review of the claim. 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 relevant and pertinent new evidence not previously considered by the Office. Since she did not meet the requirements of 20 C.F.R. § 10.606(b)(2), she was not entitled to a review on the merits.

CONCLUSION

The application for reconsideration was not sufficient to warrant reopening the claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2007 is affirmed.

Issued: April 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *See Mark A. Holloway*, 55 ECAB 321 (2004).