

ISSUES

The issues are: (1) whether the Office properly denied appellant's September 13, 2007 request for reconsideration under 5 U.S.C. § 8128(a); and (2) whether appellant was disabled from June 7 to July 7, 2007 due to his September 20, 1996 employment injury.

FACTUAL HISTORY

Appellant, a 48-year-old letter carrier, has an accepted occupational disease claim for bilateral carpal tunnel syndrome and left lunotriquetral ligament tear, which arose on or about September 20, 1996. In 2003 he underwent three surgical procedures involving his left upper extremity. The Office approved all three procedures. Appellant returned to his regular duties on February 25, 2004. However, this was short-lived. Appellant filed a notice of recurrence on March 24, 2004. He claimed he had not fully recovered from his injuries when he returned to his regular duties on February 25, 2004. Nonetheless, appellant attempted to perform his regular duties until March 16, 2004, when he could no longer continue. The employing establishment provided appellant light-duty work effective March 17, 2004. On May 26, 2004 the Office accepted appellant's recurrence of disability beginning February 25, 2004.

In a decision dated August 19, 2005, the Office terminated appellant's entitlement to continuing disability on the basis that he was no longer disabled from performing his date-of-injury position. However, he remained eligible for medical benefits.² The decision was based on the December 9, 2004 and February 15, 2005 reports of Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon and impartial medical examiner.³

Appellant subsequently requested an oral hearing, which was held on June 27, 2006. No additional medical evidence was admitted into the record. By decision dated September 12, 2006, the Office hearing representative affirmed the termination of compensation benefits effective August 19, 2005. Appellant remained eligible for medical benefits.

In February 2007, the Office received a request for authorization for a right carpal tunnel release from Dr. John G. Piper, a Board-certified neurosurgeon. The Office granted Dr. Piper's request on March 15, 2007.

On July 16, 2007 appellant filed a claim for compensation (Form CA-7) for the period June 7 to July 7, 2007. The employing establishment certified that appellant had stopped work on June 7, 2007 and returned to limited duty effective July 10, 2007. The Office initially received a June 7, 2007 preoperative electrocardiogram and a July 6, 2007 duty status report (Form CA-17).

² The Office issued a corrected copy of the decision on August 29, 2005. The August 19, 2005 decision incorrectly identified the date of injury and the position appellant held at the time of injury.

³ The Office found a conflict of medical opinion between appellant's treating physician, Dr. Timothy M. Schurman, a Board-certified plastic surgeon, with a subspecialty in hand surgery and Dr. Keith W. Riggins, a Board-certified orthopedic surgeon and Office referral physician.

By letter dated July 26, 2007, the Office advised appellant that there was no evidence to support his absence from work for the period June 7 to July 7, 2007. The Office further explained that, while surgery had been authorized, there was no evidence, such as an operative report, to establish that the surgery had occurred. Appellant was afforded 30 days to submit the requisite evidence to support his claimed disability for work due to his accepted employment injury.

The Office subsequently received a July 23, 2007 duty status report, a July 23, 2007 referral for physical therapy, and physical therapy treatment records for the period July 25 to August 24, 2007. The physical therapy records indicated, among other things, that appellant had undergone a carpal tunnel surgery on June 6, 2007. Appellant was released to resume his full-time regular duties effective September 12, 2007.

On September 13, 2007 the Office received an undated request for reconsideration of the hearing representative's September 12, 2006 decision affirming the termination of compensation effective August 19, 2005. Appellant stated that he was submitting additional pertinent evidence not previously considered. The request was accompanied by a September 6, 2007 report from Dr. Douglas S. Reagan, a Board-certified orthopedic hand surgeon, who had been treating appellant since October 2006. Dr. Reagan noted that appellant's primary pain had been over the dorsal ulnar wrist area, however, he did not specify whether it was the left wrist, right wrist or both. He also discussed various surgical procedures that might alleviate appellant's ongoing symptoms, which he considered to be employment related.

In a decision dated October 26, 2007, the Office denied appellant's claim for wage-loss compensation for the period June 7 to July 7, 2007. The Office noted that there was no medical evidence explaining appellant's month-long absence from work beginning June 7, 2007.

By decision dated October 30, 2007, the Office denied reconsideration of the hearing representative's September 12, 2006 decision.⁴ The Office found that appellant failed to provide any evidence demonstrating his inability to perform his date-of-injury job. Consequently, there was no basis to review the Office's decision terminating appellant's entitlement to continuing disability effective August 19, 2005.

LEGAL PRECEDENT -- ISSUE 1

The Office has the discretion to reopen a case for review on the merits.⁵ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.⁶

⁴ The Office mistakenly identified the prior decision as having been issued September 13, 2007.

⁵ 5 U.S.C. § 8128(a) (2000).

⁶ 20 C.F.R. § 10.606(b)(2).

Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS -- ISSUE 1

Appellant's request for reconsideration, which the Office received on September 13, 2007, neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Therefore, 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).⁸

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). Although he claimed to have submitted pertinent evidence not previously considered by the Office, Dr. Reagan's September 6, 2007 report did not provide a basis for reopening the claim for merit review. Dr. Reagan did not specifically address appellant's ability to perform his full-time regular duties as a letter carrier. Thus, while his report was new to the record, it was not relevant to the issue of whether appellant was disabled from performing his date-of-injury job. Dr. Reagan identified specific upper extremity symptoms, which he related to appellant's employment injury. He also discussed various surgical procedures he believed could possibly resolve appellant's symptoms. But Dr. Reagan offered no opinion on the pertinent issue of whether appellant was capable of performing his date-of-injury job duties. Because his September 6, 2007 opinion is not relevant to the issue on reconsideration, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).⁹ As 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), the Office properly denied the September 13, 2007 request for reconsideration.

LEGAL PRECEDENT -- ISSUE 2

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.¹⁰ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.¹¹ The evidence submitted must be reliable, probative and substantial.¹²

⁷ *Id.* at § 10.608(b).

⁸ *Id.* at § 10.606(b)(2)(i) and (ii).

⁹ *Id.* at § 10.606(b)(2)(iii).

¹⁰ *Id.* at § 10.115(e) (2007); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003).

¹¹ 20 C.F.R. § 10.115(f).

¹² *Id.* at § 10.115.

ANALYSIS -- ISSUE 2

Appellant claimed that from June 7 to July 7, 2007 he was recuperating from recent carpal tunnel surgery. The Office authorized a right carpal tunnel release in March 2007 and his July 25, 2007 physical therapy records indicated that he had undergone a carpal tunnel release on June 6, 2007. This evidence, however, is insufficient to establish that appellant was disabled from June 7 to July 7, 2007 due to his September 20, 1996 employment injury. The Office advised him on July 26, 2007 that the record was insufficient to establish entitlement to wage-loss compensation for the period June 7 to July 7, 2007. Appellant was afforded 30 days to submit evidence in support of the claimed period of disability, however, he did not respond in a timely fashion. On October 26, 2007 the Office denied wage-loss compensation because there was no medical evidence explaining appellant's month-long absence from work beginning June 7, 2007. Because the record before the Office at that time did not support his claim to wage loss for the period June 7 to July 7, 2007, the Board must affirm the October 26, 2007 decision.¹³

CONCLUSION

Appellant did not establish entitlement to wage-loss compensation for the period June 7 to July 7, 2007. The Board further finds that the Office properly denied appellant's September 13, 2007 request for reconsideration.

¹³ The information the Office had previously requested was received just a few days after it issued the October 26, 2007 decision denying wage-loss compensation. The Board, however, is not permitted to consider new evidence on appeal. 20 C.F.R. § 10.501.2(c). Appellant may file a request for reconsideration with the Office in order for this additional evidence to be properly considered. 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the October 30 and 26, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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