

FACTUAL HISTORY

On October 16, 2003 appellant, then a 44-year-old letter carrier technician, filed a claim for an injury occurring on October 14, 2003 when she sustained pain in her lower back extending down her right leg when she picked up an oversized parcel to place in a hamper. The Office accepted her claim for lumbar strain and lumbago.

On July 14, 2006 appellant filed a claim for a schedule award. In an impairment evaluation dated August 21, 2006, Dr. Olaniyi Kuku, Board-certified in preventive medicine, found that she had a 44 percent permanent impairment of the whole person. On November 12, 2006 an Office medical adviser reviewed Dr. Kuku's report and determined that appellant had a four percent permanent impairment of the right lower extremity and a two percent permanent impairment of the left lower extremity. By decision dated December 27, 2006, the Office granted appellant a schedule award for a four percent permanent impairment of the right lower extremity and a two percent permanent impairment of the left lower extremity.

On February 9, 2007 appellant requested an oral hearing. In a decision dated March 9, 2007, the Office denied her hearing request as it was untimely. It further considered appellant's hearing request and found that the pertinent issue could be equally well addressed through the reconsideration process.

On December 26, 2007 appellant requested reconsideration of the schedule award decision. She resubmitted Dr. Kuku's August 21, 2006 impairment evaluation. Appellant maintained that Dr. Kuku explained his impairment rating. She also noted that she continued to receive medical treatment. Appellant submitted medical reports from Dr. Thomas G. Cohn, a Board-certified physiatrist, and reports from physical therapists and nurses relevant to her medical treatment during the period 2006 through 2008. She also described her pain and limitations and asked about obtaining disability compensation.²

By decision dated November 17, 2008, the Office denied appellant's request for reconsideration on the grounds that she did not clearly identify her reasons for requesting reconsideration and did not submit relevant evidence or arguments not previously considered. It informed appellant that, if she was claiming an increased schedule award due to her employment injury she should submit a Form CA-7 when she reached maximum medical improvement, which was usually at the end of medical treatment.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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

² The record indicates that appellant received medical treatment from physical therapists, nurses and Dr. Cohn, during the period 2006 through 2008.

³ 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."

relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

ANALYSIS

The Office accepted that appellant sustained a lumbar strain and lumbago due to an October 14, 2003 work injury. On December 27, 2006 it granted appellant a schedule award for a four percent permanent impairment of the right lower extremity and a two percent permanent impairment of the left lower extremity.

On December 26, 2007 appellant requested reconsideration of the schedule award determination. She resubmitted a medical report dated August 21, 2006 from Dr. Kuku. Evidence which repeats or duplicates evidence already in the case record, however, has no evidentiary value and does not constitute a basis for reopening a case.¹⁰

Appellant generally argued that Dr. Kuku explained his impairment finding. She has not, however, raised any specific argument showing how the Office erred in its December 27 2006 schedule award decision. Consequently, appellant's argument does not have a reasonable color of validity such that it would warrant reopening her case for merit review.¹¹

Appellant further submitted medical reports from Dr. Cohn and reports from nurses and physical therapists pertinent to her treatment from 2006 through 2008. The reports, however, do not address the relevant issue of whether she has more than a four percent permanent impairment

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹⁰ *Richard Yadron*, 57 ECAB 207 (2005).

¹¹ *Elaine M. Borghini*, 57 ECAB 549 (2006).

of the right lower extremity and a two percent permanent impairment of the left lower extremity. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹²

On appeal, appellant argues that she reached maximum medical improvement on August 21, 2006. She asserted that she received medical treatment due to pain and contended that the Office should have considered the amount of care that she had received subsequent to its December 2006 decision. The relevant issue, however, is whether appellant submitted new and relevant evidence not previously considered, demonstrated that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.¹³

CONCLUSION

The Board finds that the Office properly denied appellant's request for further merit review of her claim under 5 U.S.C. § 8128.

¹² *Freddie Mosley*, 54 ECAB 255 (2002).

¹³ Appellant may seek an increased schedule award if she submits evidence showing that she sustained an increased impairment due to her work injury. A claim for an increased schedule award may be based on new exposure or on medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Rose V. Ford*, 55 ECAB 449 (2004); *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2008 is affirmed.

Issued: August 20, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board