



open wound with tendon, pyogenic granuloma post-trauma and, unspecified cellulites and synovial cyst of the right finger.

On August 19, 2005 an excisional biopsy was performed on appellant's right long finger by Dr. David R. Chandler, an attending Board-certified orthopedic surgeon. On September 2, 2005 Dr. Chandler amputated appellant's right long finger at the distal interphalangeal (DIP) joint due to squamous cell carcinoma. The procedure was authorized by the Office. In an October 20, 2005 report, Dr. Chandler stated that appellant suffered from right finger pain and contracture.

In a February 9, 2006 work-capacity evaluation (Form OWCP-5c), Dr. Chandler stated that appellant had reached maximum medical improvement. On June 1, 2006 he performed an excisional biopsy of a mass on his right palm.

On May 10, 2006 appellant filed a claim for a schedule award.

On July 21, 2006 Dr. James W. Dyer, an Office medical adviser, reviewed appellant's case record. Dr. Dyer opined that appellant reached maximum medical improvement on February 9, 2006. He determined that appellant sustained a 45 percent impairment of the right middle finger based on Figure 16-7 on page 447 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

By decision dated September 8, 2006, the Office granted appellant a schedule award for a 45 percent impairment for loss of use of the right middle finger. In an October 2, 2006 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative.

Following a January 25, 2007 hearing, appellant's attorney contended in a March 2, 2007 letter that appellant continued to have residuals of his accepted employment-related conditions. Counsel argued that he had not reached maximum medical improvement at the time of Dr. Dyer's rating and that continuing complications increased the permanent impairment to his right hand. Counsel also argued that a conflict existed in the medical opinion evidence between Dr. Chandler and Dr. Dyer as to the extent of permanent impairment of appellant's right hand.

In an April 27, 2006 medical report, Dr. Chandler reiterated his prior diagnosis of squamous cell carcinoma with a distal amputation of the right long finger. He stated that appellant possibly sustained squamous cell carcinoma in the right hand. Appellant's finger contracture had resolved. Dr. Chandler recommended an excisional biopsy of the mass. He related that appellant was only capable of sorting mail manually. Dr. Chandler noted his February 2006 opinion that appellant had reached maximum medical improvement and stated that he did not locate an impairment rating in his records. He delayed rating his impairment until after the biopsy was performed. In a June 15, 2006 report, Dr. Chandler stated that a pathology test demonstrated a fibromatosis mass in appellant's right arm. He stated that appellant could continue performing full-duty work sorting manual mail. Dr. Chandler opined that he had not reached maximum medical improvement. In a July 13, 2006 report, he reiterated appellant's prior diagnoses of fibromatosis in the right hand and right finger pain.

By decision dated March 23, 2007, an Office hearing representative affirmed the September 8, 2006 decision, finding that the evidence was insufficient to establish that appellant had more than a 45 percent impairment of the right middle finger.

Appellant submitted duplicate copies of reports from Dr. Chandler. In a June 19, 2007 state workers' compensation form, Dr. Chandler stated that appellant reached maximum medical improvement on June 19, 2007. In a June 19, 2007 report, he reiterated that appellant sustained squamous cell carcinoma. Dr. Chandler stated that appellant experienced pain in his right hand. A June 1, 2006 pathology report of Dr. Andres Candela, a Board-certified pathologist, stated that the mass in appellant's right palm was fibromatosis. An October 5, 2007 authorization form requested that appellant's claim be expanded to include conditions such as, pseudosarcomatous fibromatosis (proliferative) (subcutaneous) and localized superficial swelling, mass or lump of the right finger.

By letter dated March 21, 2008, appellant, through counsel, requested reconsideration of the March 23, 2007 decision. Counsel argued that appellant was not awarded the most favorable impairment rating as a schedule award for a 9 percent impairment of the hand was greater than the schedule award he received for a 45 percent impairment of the right middle finger. He stated that Dr. Chandler indicated that other aspects of impairment existed which he could not evaluate. Counsel contended that Dr. Dyer's impairment rating was incomplete because he only considered one aspect of impairment. Dr. Dyer failed to consider impairment due to abnormal motion, strength loss of the finger and hand, deformity or any other disorders that may have impacted appellant's overall impairment rating. Counsel contended that additional development of the claim was necessary to accept appellant's claim for the conditions listed on the October 5, 2007 authorization request form and to perform a functional capacity evaluation as recommended by Dr. Chandler.

In an August 22, 2007 report, Dr. Chandler stated that appellant sustained a 45 percent impairment of the right long finger based on amputation of the DIP joint which represented a 9 percent impairment of the hand (A.M.A., *Guides* 442, Figure 16-3). He stated that the impairment was not only due to loss of a portion of his right finger, but also due to pain and sensitivity of the stump. Dr. Chandler recommended a functional capacity evaluation to define some of the subtle loss of functions of appellant's hand such as, pinch and grip strength and other items which could not be measured in his office. Appellant submitted a copy of Figure 16-1a from page 436 of the A.M.A., *Guides* which provided impairments for the hand.

In an April 2, 2008 decision, the Office denied appellant's request for reconsideration. It found that the evidence submitted was repetitious in nature and failed to establish clear evidence of error and, thus, insufficient to warrant further merit review of its prior decisions.<sup>1</sup>

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<sup>1</sup> The Office's use of the term clear evidence of error in its April 2, 2008 decision is a standard of review for applications for reconsideration that are untimely filed, a standard that is not applicable in this case. See *Alberta Dukes*, 56 ECAB 247 (2005).

## LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulation 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.<sup>3</sup> 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.<sup>4</sup> 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 of the merits.

## ANALYSIS

In a March 21, 2008 letter, appellant, through counsel, disagreed with the Office hearing representative's March 27, 2007 decision, finding that he did not have more than a 45 percent impairment of the right middle finger. The relevant issue in the case, whether appellant has more than a 45 percent impairment of the right middle finger, is medical in nature.

Counsel's arguments that Dr. Dyer's impairment rating was insufficient to serve as a basis for appellant's schedule award and request for additional development of the claim are not new and relevant as they had been previously considered by the Office in reaching its final decision on appellant's schedule award claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>5</sup> The Board finds that counsel's arguments do not constitute a basis for reopening appellant's claim for merit review.

Appellant submitted duplicate copies of Dr. Chandler's February 9, June 1 and July 13, 2006 reports. Dr. Chandler's June 19, 2007 report reiterated his prior diagnosis of squamous cell carcinoma. This evidence was previously of record and addressed by the Office in its prior decisions and, thus, does not constitute a basis for reopening appellant's claim for merit review.<sup>6</sup>

Dr. Candela's June 1, 2006 pathology report stated that appellant sustained fibromatosis. Dr. Chandler's June 19, 2007 state workers' compensation form stated that appellant reached maximum medical improvement on June 19, 2007. The October 5, 2007 authorization form requested that appellant's claim be expanded to include pseudosarcomatous fibromatosis (proliferative) (subcutaneous) and localized superficial swelling, mass or lump of the right

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [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. 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>6</sup> *Id.*

finger. A copy of Figure 16-1a on page 436 of the A.M.A., *Guides* provided impairments for the hand. While this evidence is new, it is not relevant to the issue of whether appellant sustained more than a 45 percent impairment of his right middle finger. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>7</sup> The evidence submitted did not address the relevant issue of whether appellant has more than a 45 percent impairment of the right middle finger. The Board finds that this evidence does not constitute a basis for reopening appellant's claim for merit review.

Dr. Chandler's August 22, 2007 report stated that appellant sustained a 45 percent impairment of the right long finger based on amputation of the DIP joint which represented a 9 percent impairment of the hand (A.M.A., *Guides* 442, Figure 16-3). He related that the impairment was not only due to loss of a portion of his right finger, but also due to pain and sensitivity of the stump. Although Dr. Chandler's report is new evidence, it is not relevant. Under the Act, if only one digit (thumb or a finger) is impaired, the impairment percentage does not extend to a larger unit, the hand or the upper extremity.<sup>8</sup> The evidence of record establishes that appellant only sustained impairment to one finger, the right middle finger. Further, Dr. Chandler's finding that appellant sustained a 45 percent impairment of the right middle finger is not greater than the impairment for which he received a schedule award. For these reasons, the Board finds that Dr. Chandler's August 22, 2007 report does not constitute a basis for reopening appellant's claim for merit review.

The evidence submitted by 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 constitute relevant and pertinent new evidence not previously considered by the Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.<sup>9</sup>

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<sup>7</sup> *D. Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> 5 U.S.C. § 8107(c)(17), (20).

<sup>9</sup> *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2009  
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