

**United States Department of Labor
Employees' Compensation Appeals Board**

M.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 08-2231
Issued: March 23, 2009**

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

Oral Argument February 18, 2009

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 12, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated May 13, 2008. Because more than one year has elapsed between the last merit decision dated February 20, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501(c)(2) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 37-year-old mail carrier, filed a Form CA-2 claim for benefits on August 18, 1992, alleging that she developed a bilateral knee condition causally related to factors of her federal employment. The Office accepted the claim for severe bilateral knee chondromalacia.

Appellant worked intermittently until November 8, 1997. She has not worked since that time. The Office paid compensation for periods of partial and total disability.

On November 15, 2001 and May 13, 2003 appellant filed CA-7 claim forms for a schedule award based on a partial loss of use of her right and left lower extremities. In reports dated March 18, 1996 and January 27, 2007, Dr. William J. Launder, a Board-certified orthopedic surgeon, found that appellant had a 50 percent permanent impairment to her left and right legs.

In a report received by the Office on December 20, 2002, Dr. Daniel Tang, Board-certified in orthopedic surgery, found that appellant had a 5 percent impairment of the left right lower extremity and a 15 percent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*).

In a February 27, 2003 report, an Office medical adviser determined that appellant had a 12 percent impairment of the left lower extremity based on a 4/5 strength deficit in the left knee pursuant to Table 17-8 at page 532 of the A.M.A., *Guides*.

By decision dated September 3, 2003, the Office granted appellant a schedule award for a 12 percent permanent impairment of the left lower extremity for the period March 3 to October 30, 2000.

By letter dated September 12, 2005, appellant requested an oral hearing, which was held on December 20, 2006.

By decision dated February 20, 2007, an Office hearing representative affirmed the September 3, 2003 schedule award decision.

By letter dated February 14, 2008, appellant requested reconsideration. She did not submit any additional medical evidence.

By decision dated May 13, 2008, the Office denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.¹ Evidence that repeats

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. She did not submit any additional medical evidence in connection with her February 14, 2008 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

² *Howard A. Williams*, 45 ECAB 853 (1994).