

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

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**J.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mission, KS, Employer**

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**Docket No. 09-1822  
Issued: April 19, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On July 10, 2009 appellant filed a timely appeal of a May 14, 2009 decision of the Office of Workers' Compensation Programs denying her request for reconsideration without a merit review. As the most recent merit decision of the Office was issued on April 22, 2008, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e).<sup>1</sup>

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration without a merit review.

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<sup>1</sup> For Office decisions dated November 19, 2008 or later, a claimant has 180 days to file an appeal with the Board. 20 C.F.R. § 501.3(e) (2009); 73 Fed. Reg. 62,190 (October 20, 2008). For Office decisions issued before November 19, 2008, a claimant had one year in which to file an appeal. See 20 C.F.R. § 501.3(d)(2) (2008).

## **FACTUAL HISTORY**

On February 12, 2003 appellant, then a 50-year-old city mail carrier, filed an occupational disease claim alleging that she injured her right hand and wrist from repetitive motion in the performance of duty. She did not stop work. In an undated statement, appellant noted she had complications from left carpal tunnel syndrome surgery on August 2, 2002. Following surgery, she became reliant on her right hand to write, drive and case mail. Appellant also indicated that repetitive motion from casing mail caused right hand and wrist soreness. The Office accepted her claim for right carpal tunnel syndrome and authorized right carpal tunnel release.<sup>2</sup>

In a February 26, 2004 report, Dr. Regina Nouhan, a Board-certified orthopedic surgeon, diagnosed carpal tunnel symptoms on the right side for which she performed a steroid injection on May 14, 2004 and a right carpal tunnel release on July 26, 2004. In an October 12, 2004 report, she noted appellant's recurrent problems post right carpal tunnel release. Dr. Nouhan recommended that appellant undergo a functional capacity evaluation to give appellant her final work restrictions that would put her at maximum medical improvement.

Appellant filed a schedule award claim on July 19, 2007. In a March 18, 2008 report, Dr. George Varghese, a Board-certified physiatrist and an Office referral physician, found two percent impairment for flexion limitation according to Figure 16-28 on page 467 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) and four percent impairment for mild sensory loss on two-point discrimination testing in the median nerve distribution according to Table 16-10 and Table 16-15 on pages 482 and 492 respectively of the A.M.A., *Guides*. He combined these ratings to total six percent right upper extremity impairment secondary to right carpal tunnel syndrome.<sup>3</sup>

In an April 4, 2008 report, an Office medical adviser reviewed Dr. Varghese's findings and agreed that appellant had six percent impairment of the right upper extremity.

On April 22, 2008 the Office granted appellant a schedule award for six percent impairment of the right upper extremity. Appellant received compensation for 18.72 weeks from March 14 through April 12, 2008.

The Office subsequently received an October 9, 2007 report from Dr. Nouhan who noted that she last saw appellant on September 21, 2007 and that her impairment rating would be based on measurements taken at that time. Dr. Nouhan found three percent impairment of the right arm according to the A.M.A., *Guides*.

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<sup>2</sup> Appellant has other claims combined with the present claim. In Claim No. xxxxxx298, accepted for aggravated bilateral wrist tendinitis and left carpal tunnel syndrome, appellant received a schedule award for four percent permanent impairment of the left upper extremity on April 17, 2008. In Claim No. xxxxxx018, accepted for right shoulder sprain and right shoulder impingement, appellant received a schedule award for two percent impairment of the right upper extremity on April 22, 2008.

<sup>3</sup> The Board notes that Dr. Varghese had made this determination for the left wrist but that he had mistakenly transposed his findings for the left and right wrists.

In an April 14, 2009 letter, appellant through her representative requested reconsideration. She asserted that the A.M.A., *Guides* were not properly applied to her schedule award. Appellant advised that additional medical evidence was forthcoming.

In a May 14, 2009 decision, the Office denied appellant's reconsideration request without further merit review. It found that appellant's request did not raise any substantive legal questions or include any new and relevant evidence.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by 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>4</sup> Section 10.608(b) of Office regulations 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.<sup>5</sup>

### **ANALYSIS**

Appellant's April 14, 2009 request for reconsideration consists of a letter from her representative asserting that the A.M.A., *Guides* were improperly applied to determine her schedule award. Her request does not demonstrate that the Office erroneously applied or interpreted a specific point of law and it also does not advance a relevant legal argument not previously considered by the Office. Instead, appellant generally asserted that her reconsideration request was based on an improper application of the A.M.A., *Guides*, failed to specify how the A.M.A., *Guides* were improperly applied or otherwise advance a legal argument based on impairment calculations in accordance with the A.M.A., *Guides*.

Following the Office's April 22, 2008 schedule award decision, the Office received Dr. Nouhan's October 9, 2007 report in which she rated three percent impairment of the right arm based on measurements from appellant's September 21, 2007 visit. Although this report is new to the record, it does not constitute relevant evidence as appellant is claiming that she has greater impairment and Dr. Nouhan determined a lower impairment percentage than that already awarded.

Appellant's reconsideration request indicated that additional medical evidence was forthcoming. However, she did not submit any new and relevant evidence with her reconsideration request. As the underlying issue is medical in nature, to require the Office to reopen the claim for a merit review, it required appellant to submit pertinent new medical evidence supporting that she was entitled to an increased schedule award.

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<sup>4</sup> *D.K.*, 59 ECAB \_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>5</sup> *K.H.*, 59 ECAB \_\_\_ (Docket No. 07-2265, issued April 28, 2008).

For these reasons, the Office properly denied appellant's request for reconsideration as her request did not meet any of the regulatory standards for reopening the claim for a merit review.

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration without a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated May 14, 2009 is affirmed.

Issued: April 19, 2010  
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