

fracture of the neck of the fifth metacarpal bone. On October 7, 2006 appellant returned to full-time modified-duty work. On November 20, 2006 he filed a claim for a schedule award.

On June 26, 2008 the Office found a conflict in medical opinion between Dr. Ajay K. Misra, an attending Board-certified neurologist, and Dr. Frank M. Hudak, a Board-certified orthopedic surgeon and Office referral physician, regarding the extent of appellant's permanent impairment. In a December 14, 2006 medical report, Dr. Misra listed his range of motion measurements regarding appellant's right fingers and advised that appellant had causalgia or reflex sympathetic syndrome. In an April 17, 2007 report, Dr. Hudak found that appellant had 23 percent impairment of the right upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

By letter dated August 4, 2008, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Edmund A.C. Stewart, a Board-certified orthopedic surgeon, for an impartial medical examination. In an August 25, 2008 report, Dr. Stewart advised that appellant sustained 23 percent impairment of the right upper extremity based on the A.M.A., *Guides*. On October 5, 2008 an Office medical adviser agreed with Dr. Stewart's rating of impairment to the right upper extremity.

In a decision dated December 15, 2008, the Office granted appellant a schedule award for 23 percent impairment of the right upper extremity based on Dr. Stewart's opinion.

On March 14, 2009 appellant, through counsel, requested reconsideration of the December 15, 2008 decision. He submitted a duplicate copy of Dr. Misra's December 14, 2006 report.

By decision dated May 28, 2009, the Office denied appellant's request for reconsideration, finding that it neither raised substantive legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant further merit review of his claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹ 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 relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.² 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.³ 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.

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

ANALYSIS

Appellant's March 14, 2009 request for reconsideration did not allege or demonstrate 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. Consequently, the Board finds that 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).

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. He resubmitted Dr. Misra's December 14, 2006 report. This evidence was previously of record and reviewed by the Office. Duplicative evidence does not warrant reopening a case for further merit review.⁴

The Board finds that the Office properly determined that 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) and properly denied his March 14, 2009 request for reconsideration.⁵

CONCLUSION

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

⁴ See *L.H.*, 59 ECAB ____ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

⁵ *M.E.*, 58 ECAB 694 (2007) (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).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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