

strain of the groin and left hip bursitis. Appellant received compensation. On March 2, 2006 he filed a claim for a schedule award.

In a May 18, 2006 report, Dr. Juan Felipe Santos, a Board-certified neurologist, opined that appellant sustained four percent whole person impairment based on range of motion deficits under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). In a November 27, 2006 report, an Office medical adviser explained that the Office did not note impairment based on whole person impairment. He advised that Dr. Santos needed to address the “focal bone sclerosis” present in the left hip and findings on a computerized tomography scan. In a December 19, 2006 report, Dr. Santos advised that appellant’s focal bone sclerosis was incidental and likely not work related. He noted that she had a left groin strain and left hip bursitis. In a February 15, 2007 report, the Office medical adviser noted that appellant’s physician indicated that bursitis was the cause of appellant’s decreased motion. He explained that the A.M.A., *Guides* did not provide impairment for bursitis.

By decision dated February 22, 2007, the Office denied appellant’s claim for a schedule award.

On February 8, 2008 appellant requested reconsideration. In a report dated February 1, 2008, Dr. Santos opined that appellant had three percent whole person impairment based on post-traumatic arthritis to the hip. In a June 9, 2008 report, the Office medical adviser found that no specific diagnosis was provided and recommended a second opinion examination.

On August 6, 2008 the Office referred appellant together with a statement of accepted facts, Dr. Thomas Raymond, Board-certified in physical medicine and rehabilitation. In a September 4, 2008 report, Dr. Raymond reviewed his history of injury and treatment. He diagnosed osteoarthritis of the left hip with some restriction in range of motion and continued hip pain; possible mild peripheral neuropathy, which was not related to the accepted injury; obesity; mild lower extremity edema, which was not related to the work injury; and left trochanteric bursitis and groin strain, which were resolved. Dr. Raymond opined that appellant had no impairment due to the accepted groin strain or left trochanteric bursitis. He noted that if the arthritis became an accepted condition, he would need hip x-rays to rate it.

In an October 28, 2008 report, the Office medical adviser reviewed the findings of Dr. Raymond and stated that the examination did not support permanent impairment.

By decision dated November 28, 2008, the Office denied modification of its February 22, 2007 decision.

In a December 9, 2008 report, Dr. Santos noted that appellant appeared stable, had no significant change on examination since he was last seen and recommended a regimen of nonsteroidal anti-inflammatory agents on an as needed basis. He noted that appellant continued to have chronic left hip pain. On December 29, 2008 Dr. Santos recommended a therapeutic mattress due to the work-related hip injury.

On December 29, 2008 appellant requested reconsideration, contending that his post-traumatic arthritis was work related and should be an accepted condition. Appellant stated that Dr. Raymond had advised his condition would worsen and most likely lead to a hip replacement.

In a February 24, 2009 decision, the Office denied appellant's request for reconsideration finding that it was insufficient to warrant further merit review.

On appeal, appellant contends that the Office should have accepted post-traumatic arthritis of the left hip.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”²

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant disagreed with the denial of his claim for a schedule award and requested reconsideration on December 29, 2008. The underlying issue on reconsideration was whether appellant established any permanent impairment based on the accepted conditions of a sprain and strain of left hip bursitis.

Appellant requested reconsideration, contending that his post-traumatic arthritis was work related and should be a condition. He noted that Dr. Raymond had advised that his arthritis may worsen and he may need hip replacement. Appellant did not identify a specific point of law that was erroneously applied or interpreted in the Office's denial of his claim or advance a

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b).

³ *Id.* at § 10.608(b).

relevant legal argument not previously considered. Rather, his request generally addressed the accepted conditions but did not identify or show any error in the Office's denial of a schedule award. Appellant's assertions on reconsideration do not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

Appellant also failed to submit any relevant and pertinent new evidence on reconsideration. The underlying issue of permanent impairment is medical in nature and should be addressed by pertinent new medical evidence.⁴ Although appellant submitted several reports from Dr. Santos, they are not relevant because the physician did not address the issue of permanent impairment.⁵ The Office properly denied appellant's reconsideration request as it did not meet any of the regulatory standards for reopening his claim.⁶

CONCLUSION

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

⁴ *J.M.*, 60 ECAB ____ (Docket No. 09-218, issued July 24, 2009).

⁵ *See Johnnie B. Causey*, 57 ECAB 359 (2006).

⁶ Following the Office's February 24, 2009 decision, it accepted appellant's claim for localized osteoarthritis of the left pelvic region and thigh. This decision of the Board does not preclude appellant from pursuing a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2009 is affirmed.

Issued: June 9, 2010
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