

an alien. The Office accepted her claim for cervical sprain and strain, cervical spondylosis with myelopathy, contusion of the right hip, thigh and knee, sprain and strain of the lateral collateral ligament on the left and sprain and strain of the iliofemoral on the right. Appellant returned to light-duty work on May 1, 2006 and full duty on July 20, 2006.

Dr. Robert E. Scott, Jr., Board-certified in physical medicine and rehabilitation, examined appellant on March 13, 2006. He diagnosed severe cervical strain. Dr. Scott stated that appellant's shoulder and upper extremity neurological examination demonstrated normal and symmetrical motor strength, sensation and reflexes with no evidence of impingement.

On December 13, 2006 appellant's attending physician, Dr. Patrick J. Padilla, a Board-certified orthopedic surgeon, opined that she had reached maximum medical improvement and provided whole person impairment rating based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He found that she had permanent impairments of the cervical spine of eight percent of the whole person. Appellant requested a schedule award on February 26, 2007.

Dr. Robert Wysocki, an internist and district medical adviser, reviewed appellant's claim on March 4, 2008. He found that she had not submitted sufficient medical evidence to establish permanent impairment to a scheduled member. The medical adviser noted that there was no detailed upper extremity description of impairment in the medical evidence of record.

In a decision dated January 16, 2009, the Office denied appellant's claim for a schedule award on the grounds that she had not established a ratable impairment under the A.M.A., *Guides*.

Appellant requested an oral hearing on January 10, 2009. She submitted reports from Dr. Padilla which predated the finding of maximum medical improvement on December 13, 2006.¹

By decision dated May 5, 2009, the Branch of Hearings and Review denied appellant's claim for a schedule award on the grounds that it was untimely and that her claim could be reviewed through the reconsideration process.²

Appellant requested reconsideration on June 5, 2009 and submitted physical therapy notes and a note from a physician's assistant. She submitted a May 28, 2009 note related to an epidural steroid injection and a magnetic resonance imaging scan.

By decision dated June 23, 2009, the Office declined to reopen appellant's claim for reconsideration of the merits as she failed to submit relevant new evidence or argument in support of her request.

¹ Dr. Padilla's reports are dated May 19 to November 9, 2006.

² Appellant's attorney did not request that the Board review this decision on appeal.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by the Office; or includes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608 of the Office's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.⁵

ANALYSIS

The Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish a ratable impairment of a scheduled member. Appellant's physician, Dr. Padilla, a Board-certified orthopedic surgeon, opined that she reached maximum medical improvement on December 13, 2006 and limited a whole person impairment rating related to her spine. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. Neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or whole person impairment.⁶

In order to require the Office to reopen appellant's claim for a schedule award, she must submit relevant medical evidence addressing, whether she had any permanent impairment of a scheduled member. In support of her request for reconsideration, appellant submitted notes from a physical therapist and a physician's assistant.⁷ However, neither a physical therapist nor a physician's assistant is defined as a physician under the Act. These notes were not signed by any physician and are not probative medical evidence in establishing appellant's claim.⁸ As these notes are not pertinent new or relevant evidence, they are not sufficient to require the Office to reopen her claim for reconsideration of the merits.

Appellant also submitted several reports from Dr. Padilla which predated the established date of maximum medical improvement of December 13, 2006. These reports do not address the issue of her permanent impairment, as she had not yet reached maximum medical improvement.

³ 5 U.S.C. §§ 8101-8193, 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

⁶ See *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *George E. Williams*, 44 ECAB 530, 533 (1993).

⁷ 5 U.S.C. §§ 8101-8192, § 8101(2); *J.M.*, 58 ECAB 303 (2007).

⁸ *Merton J. Sills*, 39 ECAB 572 (1988).

The reports are not relevant to appellant's claim for a schedule award and are not sufficient to require the Office to conduct a further merit review.

Appellant also disagreed with the findings of the District Medical Director, Dr. Wysocki. While she contends that Dr. Wysocki improperly evaluated the medical evidence, her lay opinion does not constitute new evidence or relevant legal argument and is not sufficient to require the Office to reopen her claim.⁹

The Board finds that appellant did not submit pertinent new and relevant evidence or new legal argument. Appellant did not establish that the Office erroneously applied or interpreted a specific point of law. Therefore, the Board finds that the Office properly declined to reopen her claim for reconsideration of the merits.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁹ *Id.*