United States Department of Labor
Employees' Compensation Appeals Board

P.P., Appellant	)	
and	)	**Docket No. 10-852**
	)	**Issued: November 23, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Wallingford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2010 appellant filed a timely appeal of an August 17, 2009 decision of the Office of Workers' Compensation Programs, denying merit review of her claim. The record also contains a January 7, 2009 Office decision on the merits of the claim. For final adverse decisions of the Office,[1] issued on and after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days of the issuance of the Office's decision.[2] Since appellant did not file the appeal within 180 days of the January 7, 2009 decision, the Board does not have jurisdiction over the merits of the claim on this appeal.

ISSUE

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

[1] *See* sections 501.2(c) and section 501.3(a) of the Board's *Rules of Procedure*, respectively. 20 C.F.R. §§ 501.2(c) and 501.3(a).

[2] *Id.* at § 501.3(e).

FACTUAL HISTORY

The Office accepted that appellant sustained cervical and right shoulder strains, and right carpal tunnel syndrome, causally related to a January 14, 2003 employment incident. Appellant also has an accepted right wrist and elbow sprain resulting from a 1999 claim.[3] Pursuant to that claim, the Office issued a schedule award on May 6, 2003 for an 18 percent right arm permanent impairment. The impairment was based on right wrist loss of range of motion and radial nerve sensory impairment.

On March 31, 2008 appellant filed a claim for compensation (Form CA-7) indicating she was claiming a schedule award. In a report dated December 8, 2008, the attending orthopedic surgeon, Dr. Michael Luchini, noted paresthesias in the right hand, with full motion of the wrist and hand. He opined that appellant had a 10 percent permanent impairment to the right hand under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, based on sensory loss to the fingers and thumb.[4]

In a report dated December 23, 2008 an Office medical adviser reviewed the December 8, 2008 report, noting that a full wrist range of motion was reported, contradicting a January 24, 2003 report. The medical adviser stated the 10 percent impairment for loss of range of motion no longer applied and the current 10 percent impairment reflected the improvement in range of motion.

By decision dated January 7, 2009, the Office found appellant was not entitled to an additional schedule award based on the medical evidence.

On May 28, 2009 appellant requested reconsideration of her claim. In a report dated February 24, 2009, Dr. Luchini stated, "I stand by" the 10 percent permanent impairment rating to the right hand. He noted that appellant had previously received an 18 percent rating to the right arm, which is entirely separate from the hand rating. Dr. Luchini did not provide further explanation. In a report dated March 26, 2009, he provided brief results on examination, noting right wrist tenderness and swelling. In a report dated May 11, 2009, Dr. Luchini diagnosed chronic tendinitis and overuse injuries to the right upper extremity.

By decision dated August 17, 2009, the Office found that appellant's reconsideration request was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[5] The employee shall exercise this right through a request to

[3] The Office File No. xxxxxx282.

[4] Dr. Luchini stated the 6th edition of the A.M.A., *Guides* was used, but it is evident from the tables cited and the page numbers that he was applying the 5th edition of the A.M.A., *Guides*.

[5] 5 U.S.C. § 8128(a).

the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[6]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[7]

A timely application for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the application is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[8]

ANALYSIS

The Office denied appellant's claim for a schedule award by merit decision dated January 7, 2009. As noted, the Board does not have jurisdiction over that decision. Appellant submitted an application for reconsideration and the issue is whether she met the requirements of 20 C.F.R. § 10.606(b)(2), for further merit review.

On reconsideration, appellant reviewed some of the history of the case and the evidence of record. She did not establish that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

The January 7, 2009 Office decision was based on Dr. Luchini's December 8, 2008 report and the Office medical adviser's December 23, 2008 report. The medical evidence from Dr. Luchini did not provide any new or relevant information with respect to the issue of additional permanent impairment. In a February 24, 2009 report, Dr. Luchini stated that he stood by his opinion of a 10 percent impairment, without providing additional information. Dr. Luchini further stated the prior impairment rating to the arm was entirely separate. He did not provide any additional explanation. A current impairment is considered duplicative of a prior award if: (1) it is for the same body part as a prior award; and (2) the current impairment duplicates in whole or in part the prior award.[9] It was clear from Dr. Luchini's December 8, 2008 report that the current impairment was based solely on sensory deficit in the right hand. The February 24, 2009 report did not provide any additional relevant and pertinent evidence

[6] 20 C.F.R. § 10.605 (1999).

[7] *Id*. at § 10.606(b)(2).

[8] *Id*. at § 10.608.

[9] *T.S.*, 61 ECAB ___ (Docket No. 09-1308, issued December 22, 2009).

regarding an entitlement to an additional schedule award to a scheduled member of the body under the Act.

With respect to the March 26 and May 11, 2009 reports, they did not discuss the relevant issue. The Board accordingly finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

On appeal, appellant contends that she submitted sufficient evidence to establish an entitlement to an additional schedule award. The Board does not have jurisdiction over the merits of the claim. The only issue on appeal is whether appellant submitted an application for reconsideration that was sufficient to warrant merit review. For the reasons stated, the Board finds appellant did not submit sufficient evidence or argument to warrant further review by the Office.

CONCLUSION

The Board finds that the Office properly determined that appellant's application for reconsideration did not warrant merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2009 is affirmed.

Issued: November 23, 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