

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

D.R., Appellant)	
)	
and)	Docket No. 10-570
)	Issued: October 13, 2010
U.S. POSTAL SERVICE, POST OFFICE, Southfield, MI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2009 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated November 5, 2009 denying his request for reconsideration. As the most recent merit decision is dated February 10, 2009, more than 180 days prior to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for further review of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

On October 8, 1997 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that his bilateral carpal tunnel syndrome arose from the performance of his employment duties. The Office accepted the claim for bilateral carpal tunnel syndrome and

authorized surgery, which occurred on October 27, 1997 and January 9, 1998. Appellant returned to limited-duty work on February 12, 1998.¹

By decision dated November 17, 1999, the Office issued schedule awards for 10 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right upper extremity. The period of the awards ran from April 21, 1999 to June 30, 2000. On May 29, 2001 the Office issued schedule awards for an additional two percent impairment of the right arm and two percent impairment of the left arm, which ran from June 2 to September 27, 2000. By decision dated January 16, 2003, it issued schedule awards for an additional eight percent impairment for both arms, which ran from November 1 to December 28, 2002.

On April 22, 2005 appellant filed a claim for an additional schedule award, which was denied by decision dated May 9, 2005.

On June 13, 2005 the Office received appellant's undated reconsideration request. By decision dated August 14, 2005 the Office denied appellant's request for a merit review of his claim.

On June 13, 2008 appellant filed a claim for an additional schedule award.

In a September 16, 2008 report, Dr. M. David Jackson, a treating Board-certified physiatrist, reported that appellant had restricted range of motion of the wrist, decreased opens pollicis strength and bilateral median distribution distorted superficial tactile sensation. He concluded appellant had 10 percent impairment of the right upper extremity due to weakness of the opponens pollicis. Dr. Jackson stated appellant previously received a schedule award for 2 percent impairment for each hand for a total 24 percent impairment. He stated there was an increase of 10 percent due to appellant's motor deficits. Dr. Jackson concluded appellant's range of motion deficits would result in a higher impairment than his sensory abnormalities. He concluded appellant's total impairment was 34 percent impairment for appellant's bilateral upper extremities.

On December 4, 2008 Dr. Anthony F. Skalak, an Office medical adviser, reviewed the evidence including a statement of accepted facts and Dr. Jackson's September 16, 2008 report. He concluded that appellant had 12 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity using Tables 16-15 and 16-11 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Skalak found that appellant did not have an impairment greater than previously awarded.

By decision dated February 10, 2009, the Office denied appellant's request for an additional schedule award.

On September 29, 2009 appellant requested reconsideration and submitted a September 25, 2009 report from Dr. Jackson and a claim for a schedule award in support of his request. Dr. Jackson noted appellant had reduced joint range of motion which included 60

¹ On October 12, 1999 the Office issued a loss of wage-earning capacity determination, finding that the position of modified letter carrier fairly and reasonably represented his wage-earning capacity.

degrees bilateral wrist flexion, 35 degrees bilateral extension, “a few degrees of radial deviation bilaterally and maybe about 30 degrees of ulnar deviation.”

In a decision dated November 5, 2009, the Office denied appellant’s request for further merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,² 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.³ 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.⁴ 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 on the merits.⁵

The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.⁶ The Board also has held that the submission of evidence, which does not address the particular issue involved, does not constitute a basis for reopening a case.⁷ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

ANALYSIS

Appellant’s request for reconsideration consists of an appeal request form in which he checked a box indicating that he sought reconsideration. His request does not attempt to show that the Office erroneously applied the law because he did not identify a point of law that was

² 5 U.S.C. § 8128(a). Section 8128(a) of the Act provides that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.

³ 20 C.F.R. § 10.606(b)(2). See *R.B.*, 61 ECAB ____ (Docket No. 09-1241, issued January 14, 2010); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ 20 C.F.R. § 10.607(a). See *S.J.*, 60 ECAB ____ (Docket No. 08-2048, issued July 9, 2009); *D’Wayne Avila*, 57 ECAB 642 (2006).

⁵ 20 C.F.R. § 10.608(b). See *R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *A.L.*, 60 ECAB ____ (Docket No. 08-1730, issued March 16, 2009); *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁷ *E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009); *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *L.H.*, 59 ECAB ____ (Docket No. 07-1191, issued December 10, 2007); *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

erroneously applied or interpreted. Appellant's request form also did not advance any new relevant legal arguments not previously considered by the Office.

The additional medical report from Dr. Jackson submitted by appellant, although new, is not relevant and pertinent evidence not previously considered by the Office. In a September 25, 2009 report, Dr. Jackson advised that appellant was seen for a follow-up visit for his bilateral carpal tunnel syndrome. He noted appellant had reduced bilateral wrist range of motion, but did not provide any impairment rating or reference to the A.M.A., *Guides*. Dr. Jackson's report failed to address the pertinent issue of whether appellant had increased permanent impairment for schedule award purposes. Thus, it is not relevant to the particular issue presented in this appeal and does not warrant a reopening of the case for merit review.⁹

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 decision of the Office of Workers' Compensation Programs dated November 5, 2009 is affirmed.

Issued: October 13, 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

⁹ See *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Johnnie B. Causey*, 57 ECAB 359 (2006) (the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim).