

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

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**M.I., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Miami, FL, Employer**

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**Docket No. 10-1816  
Issued: March 21, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On July 1, 2010 appellant filed a timely appeal from a February 24, 2010 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its November 18, 2009 decision concerning the denial of her schedule award claim as she had no permanent impairment. Because more than 180 days have elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly declined to reopen appellant's case for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 16, 2001 appellant, then a 47-year-old mail handler, filed an occupational disease claim alleging that on July 27, 2001 she first realized that her epicondylitis was employment related. The Office accepted the claim for right lateral epicondylitis and authorized right elbow epicondylitis release surgery, which was performed on April 30, 2002.

In a July 24, 2002 report, Dr. Alejandro Badia, a treating Board-certified orthopedic surgeon with a hand surgery subspecialty certification, reported that appellant had successful right elbow epicondylitis release surgery with an excellent range of motion. He concluded maximum medical improvement had been reached with a zero percent permanent impairment.

On August 21, 2009 appellant filed a claim for a schedule award.

On November 9, 2009 the Office medical adviser reviewed the medical evidence and concluded that appellant had no permanent impairment due to her accepted condition. She noted that appellant underwent surgery on April 30, 2002 with good results. The Office medical adviser's final physical examination revealed full range of motion and no pain.

By decision dated November 18, 2009, the Office denied appellant's schedule award claim as the medical evidence established that she sustained no permanent impairment.

On December 30, 2009 appellant filed a request for reconsideration.

By decision dated February 24, 2010, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.<sup>2</sup>

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> When a claimant fails to meet one of the above

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<sup>2</sup> The Board notes that with her appeal to the Board appellant submitted new evidence as well as evidence previously submitted. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>4</sup> 20 C.F.R. § 10.606(b)(2). *See J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>5</sup> 20 C.F.R. § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

### **ANALYSIS**

Appellant's December 30, 2009 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Moreover, appellant did not submit any relevant and pertinent new evidence with her request for reconsideration. Consequently, she is not entitled to a review of the merits of her claim based on the above-noted requirements under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to further consideration of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(2), and thus the Office properly denied her December 30, 2009 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review pursuant to 5 U.S.C. § 8128(a).

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<sup>6</sup> 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 24, 2010 is affirmed.

Issued: March 21, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board