



## **FACTUAL HISTORY**

On October 27, 2004 appellant, then a 44-year-old transportation security screener, filed an occupational disease claim alleging that she developed a wrist condition due to lifting bags weighing up to 70 pounds. OWCP accepted her claim for bilateral wrist strain on January 5, 2005. Appellant returned to full duty on March 29, 2005. She filed a recurrence of disability claim on August 15, 2007 after she picked up baggage and both wrists and arms hurt. OWCP accepted this claim. Appellant continued to work with restrictions until January 9, 2008 when she submitted her notice of resignation effective January 23, 2008. By decision dated February 22, 2008, OWCP terminated appellant's compensation benefits for partial disability as of January 10, 2008.

Appellant requested a schedule award on April 1, 2009. She submitted a report dated November 24, 2008 from Dr. Ellis evaluating appellant's permanent impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

OWCP referred appellant for a second opinion evaluation with Dr. Michael. H. Munball, a physician Board-certified in physical medicine and rehabilitation. In a report dated October 29, 2009, he diagnosed bilateral upper extremity pain and found that appellant had no ratable permanent impairment under the sixth edition of the A.M.A., *Guides*.

By decision dated December 8, 2009, OWCP denied appellant's claim for a schedule award on the grounds that she failed to establish a permanent impairment of a scheduled member.

Appellant requested reconsideration on March 19, 2010 and submitted the March 4, 2010 report of Dr. Ellis who diagnosed bilateral wrist strains, tendinitis with carpal tunnel syndrome and median nerve impairment and Guyon's canal syndrome with ulnar nerve impairment. Dr. Ellis also diagnosed bilateral strains medial epicondylitis and cubital tunnel syndrome of the elbows, bilateral strains, traumatic arthritis, tendinitis and internal derangement of the shoulders as well as bilateral brachial plexus impingement. He opined that appellant had 24 percent impairment of each of her upper extremities based on loss of range of motion under the sixth edition of the A.M.A., *Guides*. OWCP referred this report to a medical adviser who noted that, under the sixth edition of the A.M.A., *Guides*, permanent impairment due to entrapment neuropathies such as carpal tunnel syndrome cannot be evaluated based on loss of range of motion.

In a decision dated May 3, 2010, OWCP reviewed the merits of appellant's claim and denied modification of the December 8, 2009 decision.

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<sup>2</sup> A.M.A., *Guides*, 5<sup>th</sup> ed. (2001). For new decisions issued after May 1, 2009 the Office began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

Appellant requested reconsideration on August 18, 2010 by completing an appeal request form with a checkmark by the option of reconsideration.

By decision dated September 16, 2010, OWCP declined to reopen appellant's claim for reconsideration of the merits as her appeal form was not accompanied by any new evidence or argument.

### **LEGAL PRECEDENT**

FECA provides at section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>3</sup> 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 OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>5</sup>

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. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.

### **ANALYSIS**

On August 18, 2010 appellant requested reconsideration of OWCP's May 3, 2010 decision denying her claim for a schedule award on August 18, 2010. Her request for reconsideration was not accompanied by any new evidence or argument. As appellant's request for reconsideration did not comport with the requirements of OWCP regulations governing such requests, the Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

On appeal counsel argued that OWCP failed to properly consider Dr. Ellis' March 4, 2010 report. This argument goes to the merits of the claim which are not presently before the Board. Moreover, it was not raised with the request for reconsideration. As noted, additional new evidence or argument is required for OWCP to reopen appellant's claim for consideration of the merits. As appellant did not submit new medical evidence addressing a proper application of the sixth edition of the A.M.A., *Guides* to her accepted condition or submit any argument before

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> *Id.* at § 10.608.

OWCP with her request for reconsideration, the Board finds that her request was properly denied.

**CONCLUSION**

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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