

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

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**H.Q., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 12-1124  
Issued: October 10, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 30, 2012 appellant filed a timely appeal of a February 8, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying further merit review. As over 180 days elapsed from the most recent merit decision of November 4, 2010 to the filing of this appeal the Board lacks jurisdiction to review the merits of appellant's case pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On March 6, 2003 appellant, then a 50-year-old clerk, filed a traumatic injury claim alleging that she injured her left arm, shoulder and elbow pushing a hand truck in heavy snow in

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

the performance of duty. OWCP accepted her claim for left lateral epicondylitis, left elbow strain and left shoulder strain. On October 17, 2003 appellant filed an occupational disease claim alleging cervical radiculitis due to her work duties of sorting mail with her right hand. OWCP accepted her claim for cervical radiculopathy on April 23, 2004. Appellant underwent left lateral epicondylar and radial tunnel surgical release on May 24, 2004. On December 10, 2004 she underwent an anterior discectomy with decompression at C5-6 due to a herniated disc at C5-6.

Appellant filed an occupational disease claim on May 10, 2007 alleging that she developed permanent spinal cord and nerve damage, multilevel discogenic disease and lateral epicondylitis. On June 1, 2007 OWCP accepted her claim for lateral epicondylitis and radial styloid tenosynovitis on the left.<sup>2</sup> Appellant stopped work on February 18, 2006 and retired under a disability retirement effective July 29, 2006.

Appellant filed a claim for a schedule award on December 25, 2007. In a report dated December 11, 2007, Dr. Sophia Grias, a Board-certified physiatrist, opined that appellant had reached maximum medical improvement on December 31, 2005.

In a report dated September 27, 2007, Dr. George Metropoulos, Board-certified in occupational medicine, opined that appellant had 25 percent whole person impairment. In a report dated March 12, 2008, he opined that she had 20 percent impairment of her left upper extremity due to cervical disc herniation, radiculopathy and fusion at C5-6 as well as lateral epicondylitis, radial nerve entrapment and carpal tunnel syndrome under the fifth edition of the A.M.A., *Guides*.

OWCP referred appellant for a second opinion evaluation. By report dated April 8, 2008, Dr. B.S. Bohra, a Board-certified orthopedic surgeon, opined that appellant had no orthopedic impairment or residuals of her accepted conditions.

OWCP determined that there was a conflict of medical opinion evidence between Dr. Metropoulos and Dr. Bohra. It referred appellant for an impartial medical examination to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. On August 22, 2008 Dr. Obianwu opined that appellant no longer exhibited radial tunnel syndrome, chronic lateral epicondylitis or a left shoulder problem. He found that appellant continued to exhibit cervical radiculopathy due to cervical spondylosis. On October 3, 2008 Dr. Obianwu noted that the only work-related condition which remained was cervical radiculopathy with cervical pathology into the left upper extremities. He noted that appellant's electromyography (EMG) in 2005 was negative for cervical radiculopathy. Dr. Obianwu rated appellant's permanent impairment of the spine as a whole person and then converted the whole person impairment to a left upper extremity impairment of 14 percent. In a note dated December 10, 2008, he stated that there

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<sup>2</sup> Appellant filed a recurrence of disability on February 21, 2006 alleging disability beginning February 15, 2006. OWCP denied this claim initially on March 24, 2006. Appellant repeatedly requested reconsideration and OWCP continued to deny the claim. She appealed these decisions denying her claim to the Board. By order dated March 21, 2008, the Board dismissed this appeal noting that OWCP accepted her occupational disease claim and that appellant was no longer adversely affected by the January 3 and May 29, 2007 decisions appealed. Docket No. 07-2292 (issued March 21, 2008).

were no clinical findings to substantiate cervical radiculopathy. An OWCP medical adviser reviewed the medical evidence on December 21, 2008 and opined that, as Dr. Obianwu based his impairment rating solely on the cervical spine, there was no medical evidence establishing impairment to a scheduled member entitling appellant to a schedule award.

By decision dated January 26, 2009, OWCP denied appellant's claim for a schedule award on the grounds that she had not submitted medical evidence establishing an impairment to a scheduled member. Appellant requested an oral hearing before an OWCP hearing representative on February 17, 2009 and withdrew this request on June 10, 2009.

Appellant requested reconsideration of the January 26, 2009 decision on January 25, 2010. She submitted a report from Dr. Metropoulos dated January 22, 2010.

OWCP referred appellant for a second opinion evaluation of Dr. Michael J. Geoghegan, a Board-certified orthopedic surgeon. In a report dated September 14, 2010, Dr. Geoghegan found that appellant had reached maximum medical improvement and opined that her epicondylitis had resolved. Appellant continued to experience residuals of her cervical spine injury including loss of range of motion in her spine. Dr. Geoghegan found that she had no motor or sensory deficit in either upper extremity. He concluded that appellant had no impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

By decision dated November 4, 2010, OWCP denied modification of the January 26, 2009 schedule award decision finding that Dr. Metropoulos' January 22, 2010 report was not sufficient to establish four percent impairment of the left upper extremity.

Appellant requested reconsideration on November 2, 2011 alleging that new medical evidence showed clinical objective findings and requested that the medical evidence be evaluated under the fifth edition of the A.M.A., *Guides*. She submitted a note dated December 21, 2005, finding that she had reached maximum medical improvement and a May 10, 2005 magnetic resonance imaging (MRI) scan. On April 12, 2011 Dr. Henry Tong, a Board-certified physiatrist, recommended additional facet joint injections. Appellant underwent facet joint injection on April 29, 2011. In a report dated August 25, 2011, Dr. Tong found that appellant did not require additional injections.

Dr. Vijay Samuel, a Board-certified neurologist, completed a report on October 20, 2011 diagnosing cervical radiculopathy with C5-6 weakness and left arm pain and paresthesias. Appellant underwent an EMG report on October 25, 2011 by Dr. Samuel which was abnormal in the left upper extremity and provided electrodiagnostic evidence of a moderate C5-6 radiculopathy in the left upper extremity with some denervation changes. She submitted a cervical MRI scan dated August 25, 2011.

By decision dated February 8, 2012, OWCP declined to reopen appellant's case for review of the merits. It found that she had not submitted any relevant or pertinent new evidence or argument in support of her claim for a schedule award.

## LEGAL PRECEDENT

FECA provides in 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 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

Appellant requested reconsideration on November 2, 2011 and submitted medical evidence and argument that the November 4, 2010 merit decision was incorrect. As noted, the Board does not have jurisdiction over the November 4, 2010 OWCP decision. The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) submit OWCP reopen her case for a merits. In the November 2, 2011 request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant requested that OWCP review her claim under the fifth edition of the A.M.A., *Guides*. This argument does not warrant consideration of the merits of her claim as it is well established that the sixth edition of the A.M.A., *Guides* is applicable to impairment ratings calculated after May 1, 2009.<sup>6</sup>

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not met this requirement of 20 C.F.R. § 10.606(b)(2) as she submitted medical evidence which is was not relevant to the issue of her permanent impairment. Appellant submitted several medical reports addressing her current conditions and treatments, but did not provide a medical report which addressed permanent impairment in accordance with the A.M.A., *Guides*. As she did not submit medical evidence addressing the central issue in her claim, whether she had a ratable permanent impairment to a scheduled member, she has not submitted

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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.

<sup>6</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

relevant new medical evidence requiring OWCP to reopen her claim for consideration of the merits.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Thus, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that as appellant has not erroneously applied or interpreted a point of law, advanced a legal argument not previously considered or submitted pertinent new and relevant not previously considered, OWCP properly declined to reopen her claim for consideration of the merits on February 8, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2012  
Washington, DC

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

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

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