

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

T.F., Appellant	)	
	)	
and	)	Docket No. 06-1940
	)	Issued: February 9, 2007
U.S. POSTAL SERVICE, POST OFFICE, Stroudsburg, PA, Employer	)	
	)	

*Appearances:*  
C. Daniel Higgin, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 18, 2006 appellant filed a timely appeal from a June 30, 2006 Office of Workers' Compensation Programs' nonmerit decision. Because the June 30, 2006 decision is the only decision issued by the Office since the Board issued a merit decision dated September 14, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

This is the second appeal before the Board. Appellant, a 26-year-old letter carrier, injured her neck and left shoulder when she was involved in an automobile accident on October 8, 1998. She filed a claim for benefits, which the Office accepted for cervical strain and left rotator cuff strain.

On June 3, 2003 the Office determined that there was a conflict in the medical evidence and referred the case to Dr. Gregory J. Menio, a Board-certified orthopedic surgeon, for an impartial examination to resolve the conflict. In reports dated July 15 and August 7, 2003, Dr. Menio opined that appellant was currently partially disabled but should ultimately be able to return to work for eight hours per day with restrictions. By decision dated February 11, 2004, the Office terminated appellant's wage-loss compensation, finding that Dr. Menio's referee opinion represented the weight of the medical evidence.

On March 8, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left upper extremity. She submitted a June 1, 2004 report from Dr. James B. Kim, a Board-certified physiatrist, who opined that she had a 14 percent left upper extremity impairment. By decision dated December 10, 2004, an Office hearing representative affirmed the February 11, 2004 termination decision.

In a September 14, 2005 decision,<sup>1</sup> the Board affirmed the December 10, 2004 decision of the Office hearing representative, affirming the February 11, 2004 termination decision. The Board found that the Office's decisions were supported by the referee report of Dr. Menio, whose opinion that appellant was capable of returning to her preinjury employment was entitled to the special weight of an impartial medical examiner. The complete facts of this case are set forth in the Board's September 14, 2005 decision and are herein incorporated by reference.

By letter dated December 9, 2005, appellant's attorney requested reconsideration. Appellant resubmitted the June 1, 2004 report from Dr. Kim indicating that appellant had a 14 percent left upper extremity impairment. She also submitted a copy of the Office's April 28, 2005 schedule award decision. Appellant's attorney argued that, on the basis of these documents, appellant had a permanent disability and was entitled to have her wage-loss compensation reinstated.

By decision dated June 30, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>3</sup>

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<sup>1</sup> Docket No. 05-941 (issued September 14, 2005).

<sup>2</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>3</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

### ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Appellant submitted Dr. Kim's June 1, 2004 report, which indicated that appellant had a 14 percent left upper extremity impairment and provided the evidentiary basis for the Office's April 28, 2005 decision granting her a schedule award for an 8 percent left upper extremity impairment; appellant also submitted a copy of the April 28, 2005 schedule award decision. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>4</sup> Dr. Kim's report did not present any additional evidence pertaining to the relevant issue of whether appellant had any residual disability stemming from her 1998 work injury and was therefore still entitled to disability compensation. Further, his report does not constitute new evidence as it was previously considered by the Office in its prior April 28, 2005 decision. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>4</sup> See *David J. McDonald*, 50 ECAB 185 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 30, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 9, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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