United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 08-757**
	)	**Issued: August 8, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 17, 2008 appellant filed a timely appeal from the October 18, 2007 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit denial.

ISSUE

The issue is whether the Office properly denied appellant's October 9, 2007 request for reconsideration.

FACTUAL HISTORY

On May 29, 1995 appellant, then a 34-year-old city carrier, filed a claim alleging that her right hand and wrist condition was a result of her federal employment: "My illness started when I was filing mail, keying on the computers, writing up certified letters. Then my right hand started to swell up on me." The Office accepted her claim for de Quervain's and carpal tunnel syndrome, right wrist. Appellant underwent a right carpal tunnel release with neurolysis of the

median nerve on March 26, 2001. On May 22, 2003 she received a schedule award for a 20 percent permanent impairment of her right upper extremity.

Appellant underwent a left carpal tunnel release on October 28, 2004. The Office expanded its acceptance of her claim to include bilateral carpal tunnel syndrome and, on October 24, 2006, issued a schedule award for a 15 percent permanent impairment of appellant's left upper extremity.

On December 20, 2006 appellant requested reconsideration. In a decision dated January 3, 2007, the Office denied this request on the grounds that appellant raised no substantive legal questions and submitted no new and relevant evidence.

On October 9, 2007 appellant again requested reconsideration. She submitted two evaluations from Dr. Kevin E. McGovern, an attending orthopedic surgeon. On August 31, 2007 Dr. McGovern reported that appellant presented with increasing pain and swelling in her left wrist and hand. Physical examination showed some mild swelling in her wrist, no tenderness over the first dorsal compartment, mild Finkelstein's test, no instability and decreased grip strength. Dr. McGovern diagnosed status post carpal tunnel release with residual symptoms. On October 2, 1007 he reported that appellant continued to have pain and some swelling. On physical examination Dr. McGovern found tenderness along the first dorsal compartment and the dorsal and volar aspect of her hand, mild swelling and decreased grip strength. He diagnosed de Quervain's and carpal tunnel syndrome.

In a decision dated October 18, 2007, the Office denied appellant's October 9, 2007 request for reconsideration. It found that the medical evidence she submitted was irrelevant because Dr. McGovern did not address permanent impairment.[1]

On appeal, appellant explains that she still has significant tenderness and swelling in the incisional area and that she went back to Dr. McGovern on August 31 and October 2, 2007.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[2] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[3]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth

[1] On October 22, 2007 the Office corrected its October 18, 2007 memorandum to clarify that neither of Dr. McGovern's reports, dated August 31 and October 2, 2007, was relevant.

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.605 (1999).

arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[5] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

ANALYSIS

Appellant filed her October 9, 2007 request for reconsideration within one year of the Office's October 24, 2006 schedule award. The request is therefore timely. The question is whether the request meets at least one of the standards for reopening her case.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law when issuing the October 24, 2006 award, nor did she advance a relevant legal argument not previously considered by the Office. She submitted two medical reports from Dr. McGovern, but these reports do not address the Office's October 24, 2006 schedule award. Dr. McGovern did not evaluate appellant's left upper extremity in these reports and he did not suggest that the permanent impairment of her left upper extremity was more than 15 percent. The reports show only that appellant continues to have de Quervain's and residual carpal tunnel syndrome. The issue, however, is not whether appellant continues to have tenderness and swelling; the issue is whether the impairment of her left upper extremity is greater than 15 percent. Dr. McGovern's reports have no bearing on this. The Board finds that this evidence is not relevant and pertinent to the issue the Office decided on October 24, 2006.

Because appellant's October 9, 2007 request for reconsideration does not meet at least one of the three standards for reopening her case, the Board will affirm the Office's October 18, 2007 decision denying her request.

CONCLUSION

The Board finds that the Office properly denied appellant's October 9, 2007 request for reconsideration.

[4] *Id*. at § 10.606.

[5] *Id*. at § 10.607(a).

[6] *Id*. at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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