

right carpal tunnel release on November 7, 2002 performed by Dr. David Burns, an attending orthopedic surgeon. On December 17, 2003 the Office accepted a June 2, 2003 recurrence of disability. On October 30, 2005 appellant filed a claim for a schedule award for bilateral hand impairment.

In response to a January 30, 2006 letter from the Office, Dr. Burns advised that appellant had 65 percent upper extremity impairment based on decreased strength and sensory deficit, pain or discomfort with a January 1, 2006 date of maximum medical improvement. He did not provide findings on physical examination or explain his impairment rating.

In a March 25, 2008 report, Dr. Medhat A. Kader, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the history of appellant's condition and provided findings on physical examination. Appellant reported impaired sensation in all five fingers of both hands but was able to pick up a coin and a button and turn a doorknob. There was no muscle wasting in her hands. Appellant had normal action of the small muscles of the hands, the long flexor and extensor tendons of the hands and the small joints of the fingers. Tinel's and Phalen's signs were negative bilaterally. There was no swelling of the fingers, no trophic changes, no temperature or color changes and no hypersensitivity of the hands or fingers. Appellant had abnormal mobility and crepitus, associated with pain, on passive movements of the basal joints of both thumbs, consistent with advanced osteoarthritis at the basal joint of both thumbs. Dr. Kader stated that there was no evidence of residuals from her accepted condition, bilateral carpal tunnel syndrome. His opinion was based on the fact that her symptoms were not consistent with median nerve distribution, her reported sensory impairment was not anatomic and two objective tests for carpal tunnel syndrome, Phalen's and Tinel's tests, were negative.

By decision dated May 16, 2008, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that she sustained permanent impairment to her hands as a result of her accepted bilateral carpal tunnel syndrome.

On January 14, 2009 appellant requested reconsideration. She argued that the Office should have contacted Dr. Burns to discuss her medical condition. Appellant alleged that Dr. Kader was known for his bias against workers' compensation claimants and had made up his mind about her claim before he examined her. In an April 24, 2007 report, Dr. Burns diagnosed bilateral carpal tunnel syndrome and indicated that he treated appellant from August 2002 to May 2006. He noted that she retired in September 2006. Dr. Burns did not address the issue of appellant's hand impairment due to her accepted bilateral carpal tunnel syndrome.

By decision dated March 26, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against

¹ 5 U.S.C. §§ 8101-8193.

compensation.² The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that the evidence or argument submitted by 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.⁵ 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.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

With her request for reconsideration of the May 16, 2008 decision, appellant argued that the Office should have contacted Dr. Burns to discuss her medical condition. This argument does not address the issue of whether the medical evidence at the time of the May 16, 2008 decision established that she had no residual impairment from her bilateral carpal tunnel syndrome. Therefore, it does not constitute relevant and pertinent new evidence not previously considered by the Office. Appellant asserted that Dr. Kader was known for his bias against workers' compensation claimants and had made up his mind about her claim before he examined her. She offered no evidence in support of her allegation of bias. Therefore, her assertion does not constitute relevant and pertinent new evidence not previously considered by the Office. In an April 24, 2007 report, Dr. Burns diagnosed bilateral carpal tunnel syndrome, but he did not address the issue of appellant's impairment due to her accepted condition. Therefore, his report does not constitute relevant and pertinent new evidence not previously considered by the Office. Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by the Office, which properly denied her request for reconsideration.

On appeal appellant argues that the Office did not conduct a thorough and honest review of her claim. The issue on appeal is whether the Office abused its discretion in denying her request for reconsideration of its May 16, 2008 merit decision. As noted, appellant failed to provide evidence or argument meeting any of the three requirements for reopening a case for

² *Id.* at § 8128(a).

³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

further merit review. Therefore, the Office did not abuse its discretion in denying her request for reconsideration.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2009 is affirmed.

Issued: March 5, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board