

FACTUAL HISTORY

Appellant, a 35-year-old cook, injured his right arm on January 29, 1993 when he tripped over a bag of empty cans and used his right hand to break his fall. OWCP accepted his claim for a closed fracture of the right ulna; right carpal tunnel syndrome; a lesion of the ulnar nerve; right, mallet finger; right, closed fracture of the base of the metacarpal and gastrointestinal hemorrhage.

Appellant received a schedule award for a 28 percent permanent impairment of the right upper extremity in August 1995.

On September 16, 2009 appellant underwent surgery to ameliorate right carpal tunnel syndrome and to repair a tourniquet tear and fibrocartilage complex of the right wrist. The procedure, which involved a decompression of the median nerve of the right carpal tunnel, reconstruction of the carpal ligament and repair of the triangular fibrocartilage complex, was performed by Dr. Everett Lee Campbell, a specialist in orthopedic surgery and appellant's treating physician.

In an August 27, 2010 impairment evaluation, Rudy Marin, a licensed physical therapist, found that appellant had a 9 percent permanent impairment based on loss of right wrist motion and a 16 percent permanent impairment based on loss of strength in the median, ulnar and radial nerves. He made the ratings pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*).

In an October 12, 2010 report, Dr. Campbell advised that appellant had undergone right wrist surgery which involved right carpal tunnel surgery and repair of the 17CC of the right wrist. He stated that he had achieved a satisfactory result although he still experienced some pain and he used a brace at times. Dr. Campbell opined that appellant had a 24 percent upper extremity impairment which converted to a 14 percent whole person impairment.

On November 23, 2010 appellant filed a Form CA-7 claim for an additional schedule award based on a partial loss of his right upper extremity.

By letter dated December 6, 2010, OWCP informed appellant that it required additional medical evidence in order to determine whether he was entitled to an additional schedule award. It specifically asked appellant to have his treating physician submit a medical report and impairment rating rendered pursuant to the A.M.A., *Guides* (sixth edition). OWCP requested that appellant submit the additional evidence within 30 days.

Dr. Campbell submitted reports dated December 13, 2010 and February 14, 2011 which essentially reiterated his previous findings and conclusions. These reports, however, did not contain an impairment rating for appellant's right upper extremity in conformance with the sixth edition of the A.M.A., *Guides*.

By decision dated April 1, 2011, OWCP found that appellant had no ratable impairment causally related to his accepted right upper extremity conditions and therefore was not entitled to an additional schedule award.

On May 14, 2011 appellant requested reconsideration.

In a May 9, 2011 report, received by OWCP on May 20, 2011 Dr. Campbell indicated that he concurred with the right upper extremity impairment rating rendered by Mr. Marin, the licensed physical therapist, which indicated that appellant had a 9 percent right upper extremity loss of motion and a 16 percent right upper extremity motor loss, for a combined 24 percent upper extremity impairment. He noted that, although this rating was calculated pursuant to the fifth edition of the A.M.A., *Guides* total, it should be listed as having been rendered pursuant to the updated sixth edition.

In an August 10, 2011 report, an OWCP medical adviser reviewed Dr. Campbell's reports and advised that, as there was considerable difference in the methodology between the fifth and sixth editions of the A.M.A., *Guides*, Dr. Campbell was required to submit a new, updated impairment evaluation in conformance with the sixth edition. In the event that this report was not obtained, OWCP's medical adviser recommended that appellant be referred to an appropriate Board-certified specialist for a new impairment evaluation, calculated pursuant to the appropriate protocols of the sixth edition of the A.M.A., *Guides*.

By letter dated August 25, 2011, OWCP informed appellant that it required an updated impairment evaluation conducted pursuant to the appropriate protocols of the sixth edition of the A.M.A., *Guides*. It requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional medical evidence within 30 days.

In order to determine whether appellant had any additional impairment of the right upper extremity stemming from his accepted right wrist conditions, OWCP referred him to Dr. Sofia M. Weigel, a Board-certified orthopedic surgeon, for a second opinion examination. In a November 8, 2011 report, Dr. Weigel found based on the medical history, the statement of accepted facts and her examination of appellant that he had a 16 percent right upper extremity impairment. She derived this rating by finding that he had a 6 percent impairment based on a diagnosis of right carpal tunnel syndrome at Table 15-23 at page 449 of the A.M.A., *Guides*; a 2 percent impairment based on a diagnosis of right wrist sprain at Table 15-3 at page 395 of the A.M.A., *Guides*; and an 8 percent impairment for the diagnosis of right mallet finger, fifth digit at Table 15-2 at page 392 of the A.M.A., *Guides*.

In a November 18, 2011 report, an OWCP medical adviser reviewed Dr. Weigel's findings and determined that appellant had a nine percent right upper extremity impairment. He concurred with her six percent impairment rating for right carpal tunnel syndrome and her two percent rating for right wrist sprain; he, however, found that the diagnosis of right mallet finger only accounted for a one percent impairment, not the eight percent impairment calculated by Dr. Weigel. The medical adviser also found that in light of the fact that he had already received a schedule award for a 28 percent right upper extremity impairment based on abnormalities in the same anatomic unit, he was not entitled to an additional schedule award.

By decision dated November 28, 2011, OWCP, relying on the opinion of its medical adviser, denied modification of the April 1, 2011 decision.

On November 9, 2012 appellant requested reconsideration.

In support of his request for reconsideration, appellant submitted reports from Dr. Campbell. A January 18, 2012 report indicated that appellant had undergone right carpal tunnel surgery which had healed well and that he had expressed disappointment with his impairment rating. Dr. Campbell's March 21, May 23, August 1 and October 25, 2012 reports stated findings on examination and noted that he had bilateral carpal tunnel syndrome. The December 5, 2012 report provided an update on appellant's right carpal tunnel syndrome and advised that he was back to his normal activities; his clinical examination showed that he had good sensation in all digits and good grip strength in his right hand. None of these reports contained an impairment rating rendered under the sixth edition of the A.M.A., *Guides*.

In a report dated July 19, 2012, Dr. Helson Pacheco-Serrant, a neurosurgeon, advised that appellant underwent a magnetic resonance imaging (MRI) scan for back pain with radiation to the left lower extremity. The results of the test showed a disc herniation with nerve impingement on the left side, moderate to severe, at the L3-4, L4-5 and L5-S1 levels; the report also indicated that appellant had clinical radiculopathy on the left lower extremity consistent with the MRI scan findings.

By decision dated January 29, 2013, OWCP denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent new evidence not previously considered by OWCP.² 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.³

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. He submitted several reports from Dr. Campbell, his treating physician. The Board has held that the submission of evidence which does not address the issue involved in the case does not constitute a basis for reopening the claim.⁴ The evidence that appellant submitted with his November 9, 2012 reconsideration request was duplicative of the evidence of record. It did not constitute pertinent new evidence on whether he sustained greater permanent impairment of the right upper extremity due to his accepted conditions. The progress reports from Dr. Campbell dated January to December 2012 stated findings on examination and

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

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ *See David J. McDonald*, 50 ECAB 185 (1998).

provided updates on appellant's bilateral carpal tunnel condition. Dr. Campbell did not provide any additional medical opinion on appellant's permanent impairment. The July 19, 2012 MRI scan report pertained to a lower back condition which was not accepted by OWCP. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its January 29, 2013 decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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