

result of the repetitive duties she performed in her federal employment. OWCP accepted her claim for bilateral carpal tunnel syndrome, left rotator cuff sprain, and other affections of the left shoulder region not elsewhere classified. It also accepted an acquired trigger finger on the right.

OWCP granted a schedule award for three percent permanent impairment of each upper extremity due to bilateral carpal tunnel syndrome.

In 2013 appellant filed a claim for an additional schedule award. Dr. Stephen D. Webber, a Board-certified orthopedic surgeon, reported seven percent permanent impairment of her left upper extremity based on a full-thickness tear of the rotator cuff. An OWCP medical adviser concurred with the rating.

On February 25, 2014 OWCP issued a schedule award for an additional four percent permanent impairment of the left upper extremity due to a full-thickness tear of the rotator cuff. This represented the seven percent impairment rating given by Dr. Webber, less the three percent award appellant previously received for her carpal tunnel syndrome.

On January 27, 2015 OWCP received a reconsideration request from appellant. Appellant noted that Dr. Webber's seven percent impairment rating related only to her shoulder and did not include her carpal tunnel condition. She argued that her total left upper extremity impairment should be 10 percent.

To support her request, appellant submitted an October 1, 2014 report from Dr. Webber. Dr. Webber confirmed that his seven percent rating was for the shoulder and did not take into account any other impairment of the left upper extremity. "The patient states she has also been diagnosed with carpal tunnel and if the carpal tunnel were added, it would increase the percentage of impairment."

In a decision dated March 10, 2015, OWCP denied appellant's reconsideration request. It found that the evidence was insufficient to warrant a review of the February 25, 2014 schedule award decision. Specifically, OWCP found that appellant failed to provide the information needed to consider her carpal tunnel condition.

On appeal, appellant argues that OWCP should reopen her case and send the evidence to an OWCP medical adviser to determine the percentage of her left upper extremity impairment.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument

² 5 U.S.C. § 8128(a).

not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP 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, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

OWCP received appellant's reconsideration request within one calendar year of its February 25, 2014 schedule award decision. Appellant's request is therefore timely. The question that remains is whether her request met at least one of the three standards for obtaining a merit review of her case.

Appellant's request advanced a relevant legal argument not previously considered by OWCP, namely, that OWCP should have combined the diagnosis-based impairment of her left upper extremity due to a full-thickness rotator cuff tear with the peripheral nerve impairment of her left upper extremity due to carpal tunnel syndrome. According to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), peripheral nerve impairment, such as from carpal tunnel syndrome, may be combined with diagnosis-based impairment, such as from a rotator cuff tear, at the upper extremity level, so long as the diagnosis-based impairment does not encompass the nerve impairment.⁶ It was appellant's argument that her total left upper extremity impairment should therefore be 10 percent, not 4 percent.

Appellant thus advanced a legal argument that was relevant to OWCP's March 10, 2015 schedule award decision and which OWCP did not previously consider. Instead of combining the seven percent rating for a full-thickness rotator cuff tear with the three percent rating for carpal tunnel syndrome, OWCP subtracted the carpal tunnel rating from the rotator cuff rating as though the two were duplicative.

Appellant also submitted relevant and pertinent new evidence not previously considered by OWCP, namely, the October 1, 2014 report of Dr. Webber, the attending orthopedic surgeon. Dr. Webber made clear that his seven percent rating for appellant's shoulder did not take into account any other impairment of the left upper extremity. And if carpal tunnel syndrome were added, he advised, it would increase the percentage of impairment. As noted before, OWCP

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* § 10.607(a).

⁵ *Id.* § 10.608.

⁶ A.M.A., *Guides* 419.

decreased Dr. Webber's rating because of appellant's three percent award for carpal tunnel syndrome.

The Board finds that appellant's reconsideration request met at least one of the standards for obtaining a merit review of her case. Accordingly, appellant is entitled to a merit review. The Board will, therefore, set aside OWCP's March 10, 2015 decision and remand the case for a *de novo* decision on appellant's claim for an additional schedule award.

CONCLUSION

The Board finds that OWCP did not properly deny appellant's request for further merit review of her case. Appellant's reconsideration request met at least one of the standards for obtaining a merit review.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: March 10, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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