

In a decision dated September 22, 2008, the Office denied an increased schedule award. It found that further evaluation of appellant's shoulders established only an eight percent impairment bilaterally.

On August 4, 2009 appellant requested reconsideration. She submitted the July 1, 2009 report of Dr. James E. Mann, who reported that the highest percentage that could be assigned for a full thickness rotator cuff tear was seven percent, according to Table 15-5, page 403 of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

In a decision dated August 17, 2009, the Office denied appellant's August 4, 2009 request for reconsideration. It found that the request did not meet at least one of the three standards for reopening her case.

LEGAL PRECEDENT

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹ The employee shall exercise this right through a request to the district Office.²

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office 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 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.³

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁴ 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 request for reconsideration without reopening the case for a review on the merits.⁵

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.605.

³ *Id.* at § 10.606.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608.

ANALYSIS

Following the Office's September 22, 2008 merit decision denying an increased schedule award, appellant filed a timely request for reconsideration, but the medical evidence she submitted did not support that she had more than an 11 percent impairment of her left upper extremity or more than a 12 percent impairment of her right upper extremity, for which she previously received schedule awards. Dr. Mann reported that the highest rating appellant could receive under the new edition of the A.M.A., *Guides* was seven percent bilaterally.

This evidence while new is not relevant or pertinent to the Office's September 22, 2008 decision. It does not establish that appellant has increased impairment to either upper extremity. For this reason, the Office properly found that appellant's request for reconsideration failed to provide relevant and pertinent new evidence not previously considered by the Office. Appellant's request also failed to show that the Office erroneously applied or interpreted a specific point of law, and it failed to advance a relevant legal argument not previously considered by the Office.

Because appellant's August 4, 2009 request for reconsideration did not meet at least one of the three standards for reopening her case, the Board finds that the Office properly denied her request for a merit review. The Board will affirm the Office's August 17, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's August 4, 2009 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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