

March 11, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.³

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of the claim under 5 U.S.C. § 8128(a).

On appeal, appellant contends that clarification should have been sought from the second opinion examiner.

FACTUAL HISTORY

This case has previously been before the Board. On April 14, 1999 appellant, then a 50-year-old rural letter carrier, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome as a result of repetitive casing of mail. On June 28, 1999 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. On December 5, 2000 OWCP issued schedule awards for a one percent impairment of the left upper extremity and a three percent impairment of the right upper extremity. This decision was affirmed by a hearing representative on September 4, 2001. By decision dated January 29, 2002, OWCP reviewed appellant's case on the merits but denied modification of the schedule award. By decision dated December 27, 2002, the Board affirmed the schedule awards.⁴ The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

On April 30, 2009 appellant filed a claim for a schedule award for additional impairment.

In a May 2, 2009 opinion, Dr. John W. Ellis, a Board-certified family practitioner, concluded that appellant had a 19 percent impairment of her right upper extremity and a 20 percent impairment of her left lower extremity. OWCP referred appellant's record to its medical adviser. By letter dated August 15, 2009, OWCP's medical adviser recommended that appellant be referred for a second opinion examination, noting that it was unclear what edition of the A.M.A., *Guides* Dr. Ellis used in evaluating her impairment. It did not appear that he applied the sixth edition of the A.M.A., *Guides*.

On August 26, 2009 OWCP referred appellant to Dr. Jeffrey Woodward, a Board-certified physiatrist, to determine the extent of permanent impairment. In a report dated September 10, 2009, Dr. Woodward listed his findings on physical examination and initially determined that appellant had a two percent impairment of her right upper extremity and a two percent impairment of her left upper extremity pursuant to the A.M.A., *Guides*. In an addendum dated September 25, 2009, Dr. Woodward stated that inadvertent errors in the impairment rating calculation were found and he advised and that appellant had a left upper extremity impairment of six percent.

³ An appeal of an OWCP decision issued on or after November 19, 2008 must be filed within 180 days of the date of the decision. 20 C.F.R. § 501(e).

⁴ Docket No. 92-1522 (issued December 27, 2002).

On October 29, 2009 an OWCP medical adviser reviewed the reports, and noted that Dr. Woodward provided the documentation necessary to use Table 15-21, page 438, for the median nerve below midforearm -- entire nerve. Dr. Woodward considered the relevant factors and determined that appellant had a two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity. The medical adviser concluded that these impairment ratings were acceptable based on the sixth edition of the A.M.A., *Guides*. He noted that prior awards must be subtracted, and therefore appellant was not entitled to an additional schedule award to his right upper extremity, but that he was entitled to a one percent additional award to his left upper extremity.

On November 2, 2009 OWCP issued an award for an additional one percent of the left upper extremity impairment and found no additional impairment of the right upper extremity.

On February 10, 2010 appellant requested reconsideration. She contended that the OWCP medical adviser prepared his report based upon a review of Dr. Woodward's September 28, 2009 report but that Dr. Woodward appended this report and stated that the left upper extremity rating should be increased to six percent.

On March 3, 2010 an OWCP medical adviser noted that Dr. Woodward did not properly explain his rationale for the higher impairment rating.

By decision dated March 11, 2010, OWCP determined that the evidence was insufficient to warrant modification of the prior decision.

On May 7, 2010 appellant requested reconsideration, contending that OWCP neglected to follow proper procedures with regard to obtaining clarification from the second opinion physician.

By decision dated July 30, 2010, OWCP denied appellant's request without conducting a merit review of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁶ To be entitled to a merit review of an OWCP 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.⁷ When a claimant fails to

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP appropriately denied appellant's request for reconsideration. Appellant's argues that OWCP should have obtained clarification from the second opinion physician. The Board notes that OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.⁹ OWCP's medical adviser is responsible for reviewing the file, particularly the medical report on which the award is to be based, and then calculating the award.¹⁰ OWCP's medical adviser reviewed the medical opinions of record and determined appellant's impairment rating based, in part, on the opinion of Dr. Woodward. Dr. Woodward did issue an addendum, however, OWCP's medical adviser addressed the addendum and determined that it was not sufficient to merit a greater schedule award. Therefore, as appellant has failed to establish that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit any pertinent new and relevant evidence, the Board finds that OWCP properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration without merit review of the claim under 5 U.S.C. § 8128(a).

⁸ *Id.* at § 10.608(b).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Claims, *Determining Schedule Awards*, Chapter 3.700.3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2011 is affirmed.

Issued: November 1, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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