

**United States Department of Labor  
Employees' Compensation Appeals Board**

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G.L., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Covington, VA, Employer

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**Docket No. 11-767  
Issued: September 30, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 8, 2011 appellant filed a timely appeal from a January 21, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than 180 days elapsed between the last merit decision dated November 6, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the January 21, 2011 nonmerit decision.

**ISSUE**

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 2, 2005 appellant, then a 51-year-old rural letter carrier, filed a traumatic injury claim alleging that on July 28, 2005 he sustained injuries due to a motor vehicle accident. OWCP accepted the claim for right elbow contusion, right elbow abrasion, left chest wall contusion scalp abrasion and cervical strain.<sup>2</sup>

On March 24, 2007 appellant filed a claim for a schedule award.

In a May 30, 2008 report, Dr. William Andrews, a second opinion Board-certified orthopedic surgeon, reviewed the statement of accepted facts and medical evidence and performed a physical examination. Based on his findings, he concluded that appellant had 10 percent impairment of the right upper extremity using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). This was based on appellant's mild-to-moderate limitation of motion of his right arm.

On February 23, 2009 Dr. Lawrence A. Manning, Jr., OWCP's medical adviser, reviewed Dr. Andrews' report and concluded that appellant had five percent right upper extremity impairment based on loss of strength using Table 16-35, page 510 of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

In an August 12, 2009 report, Dr. Manning, using the sixth edition of the A.M.A., *Guides*, (6<sup>th</sup> ed. 2009) concluded that appellant had no ratable permanent impairment for his accepted conditions using Dr. Andrews' May 30, 2008 report.

By decision dated November 6, 2009, OWCP denied appellant's request for a schedule award.

On April 16, 2010 appellant requested reconsideration and contended that it was unfair of OWCP to deny his claim using the sixth edition of the A.M.A., *Guides* instead of the fifth edition. In a June 10, 2010 report, Dr. Ronald S. Goings, a treating Board-certified family practitioner, noted that appellant had been injured in an automobile accident at work. A physical examination revealed good shoulder range of motion and good arm muscle strength. Dr. Goings noted that appellant continued to have symptoms of his employment injury.

By decision dated July 22, 2010, OWCP denied appellant's request for reconsideration, finding that the evidence and argument presented were insufficient to warrant further merit review.

On January 10, 2011 appellant requested reconsideration and noted that he was trying to find a physician who would perform an evaluation based on the sixth edition of the A.M.A., *Guides*.

By decision dated January 21, 2011, OWCP denied reconsideration.

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<sup>2</sup> On June 13, 2008 OWCP issued a loss of wage-earning capacity which found that appellant had no loss wage-earning capacity in his modified carrier position.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> its regulations provide that 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.<sup>4</sup> 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.<sup>5</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

## ANALYSIS

OWCP issued a decision on November 6, 2009 denying appellant's claim for a schedule award based on Dr. Manning's August 12, 2009 report which found no evidence of a ratable permanent impairment based on criteria set forth by the sixth edition of the A.M.A., *Guides*. The issue presented on appeal is whether appellant's January 10, 2011 reconsideration request met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. He submitted no new medical evidence in support of his request. The underlying issue in this case was whether appellant sustained any permanent impairment to his right arm based on the criteria set forth in the sixth edition of the A.M.A., *Guides*. That is a medical issue which must be addressed by relevant medical evidence.<sup>7</sup> Appellant did not submit any medical evidence within his reconsideration request.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered. The June 10, 2010 report of Dr. Goings although new, was not pertinent or relevant to the extent and degree of any permanent impairment appellant may have sustained resulting from the effects of the July 28,

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>4</sup> 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

<sup>5</sup> *Id.* at § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

<sup>6</sup> *Id.* at § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

<sup>7</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

2005 employment injury. Dr. Goings only noted that appellant had symptoms of the employment injury. Thus, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 21, 2011 is affirmed.

Issued: September 30, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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