

FACTUAL HISTORY

On October 8, 2009 appellant, a 59-year-old health technician, sustained an injury in the performance of duty when she slipped and fell down a stairway. OWCP accepted her claim for lumbar back sprain and right lateral collateral ligament knee sprain.

Appellant claimed a schedule award. Dr. Christopher K. Nagy, the attending Board-certified orthopedic surgeon, advised that he was not formally trained in the proper evaluation of impairment and requested that OWCP refer appellant to an occupational health physician or other individual well versed to perform such an evaluation.

An OWCP medical adviser reviewed the medical record and noted that the accepted conditions had resolved. There was no radiculopathy and no clinical finding of permanent knee limitation.

In a July 28, 2010 decision, OWCP denied appellant's schedule award claim.

On August 11, 2010 Dr. Nagy found that appellant had reached maximum medical improvement from the accepted sprains. Due to her improvement and lack of findings of any specific physiologic abnormality, he explained that "there will be no impairment rating for [appellant] in regard to the sprain of her back and the lateral ligament of her knee." Dr. Nagy added that the impairment rating for her lumbar spine and knee sprain was zero "as both have resolved over the passage of time."

In a December 2, 2010 decision, an OWCP hearing representative affirmed the denial of appellant's schedule award claim.

On March 2, 2011 Dr. Nagy advised that when he saw appellant following her fall she was complaining of pain in her shoulder. Although the October 8, 2009 incident was not fully responsible for her shoulder problems, he found that appellant did sustain an injury to her shoulder at that time, which further aggravated her condition and continued to cause disability and pain with use of the arm in general.

In a July 14, 2011 decision, OWCP reviewed the merits of appellant's case and denied modification of its prior decisions. It noted that Dr. Nagy offered no diagnosis of appellant's shoulder condition and made no distinction between her current condition and an employment-related right shoulder injury she sustained on April 12, 2005.² As there was no basis to expand the acceptance of appellant's claim to include a shoulder condition, OWCP found it unnecessary to develop the issue of impairment for that extremity. It noted that the medical evidence supported the resolution of the accepted conditions without permanent impairment.

Appellant submitted an appeal request form with an "X" indicating that she was requesting reconsideration.

² OWCP File No. xxxxxx706.

In an August 10, 2011 decision, OWCP denied appellant's request on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the prior decision.

On appeal, appellant argues that her case should be considered because "you did not receive the percentage rating from my physician." She explained that she fell down stairs in October 2009 and injured her shoulder for the third time. Dr. Nagy was unable to do surgery because she had surgery twice before. Appellant stated that her shoulder has a permanent tear and that paperwork has been submitted several times for the same thing.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.³ Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴

ANALYSIS -- ISSUE 1

Dr. Nagy, the attending orthopedic surgeon, offered no evaluation of impairment under the sixth edition of the A.M.A., *Guides*. He found, however, that appellant had no impairment from the accepted back and knee sprains because both had resolved with the passage of time. There were no findings of any specific physiologic abnormality. This was consistent with the record review performed by OWCP's medical adviser.

As for a possible shoulder injury on October 8, 2009, OWCP did not accept that such an injury occurred. Dr. Nagy explained that, when he saw appellant following her fall down the stairs, she was complaining of pain in her shoulder. He did not offer any specific diagnosis of a shoulder injury, or explain how the October 8, 2009 employment injury caused her symptoms. The record indicates that appellant had a preexisting shoulder injury. Dr. Nagy did not provide a full history of appellant's shoulder treatment or explain how the October 15, 2009 incident materially changed her shoulder condition. There is no evidence that any such injury caused permanent impairment to the upper extremity. As noted earlier, Dr. Nagy offered no evaluation of impairment.

As the medical evidence does not support that the October 8, 2009 employment injury caused permanent impairment to any scheduled member of the body, the Board finds that appellant is not entitled to a schedule award. The Board will affirm OWCP's July 14, 2011 decision.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

Appellant argues that OWCP has not received all her paperwork and that her shoulder has a permanent tear. OWCP and the Board must adjudicate her schedule award claim based on the evidence of record.⁵ If appellant feels that the employing establishment is not forwarding evidence to OWCP, she may submit the evidence to OWCP directly.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁶ 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 not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷

A request for reconsideration must be sent within one year of the date of OWCP decision for which review is sought.⁸ 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.⁹

ANALYSIS -- ISSUE 2

Appellant submitted a timely but bare request for reconsideration. She did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. She did not submit relevant and pertinent new evidence not previously considered by OWCP.

Appellant simply placed an "X" on her appeal request form to indicate that she was requesting reconsideration. Such unsupported requests are *prima facie* insufficient to warrant the reopening of a case. As appellant's request for reconsideration did not meet any of the standards

⁵ The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606.

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608.

for obtaining a merit review, the Board finds that OWCP properly denied her request. The Board will affirm OWCP's August 10, 2011 decision.

CONCLUSION

The Board finds no evidence that appellant's October 8, 2009 employment injury caused permanent impairment to a scheduled member. The Board also finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 10 and July 14, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 6, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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