

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

R.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
LANGLEY AIR FORCE BASE, VA, Employer**

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**Docket No. 11-2044
Issued: April 10, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2011 appellant timely appealed the March 17, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied reconsideration of a September 16, 2010 schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board's jurisdiction extends only to the March 17, 2011 nonmerit decision.²

ISSUE

The issue is whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. §§ 8101-8193.

² Because the latest merit decision was issued on September 16, 2010; more than 180 days prior to the filing of the instant appeal, the Board does not have jurisdiction over the merits of appellant's claim for a schedule award. The Board also notes that he submitted additional evidence with his notice of appeal. Because this evidence was not submitted to OWCP prior to the issuance of its March 17, 2011 decision, the Board is precluded from considering it for the first time on appeal. 20 C.F.R. § 501.2(c)(1) (2011).

FACTUAL HISTORY

On March 2, 2005 appellant, then a 51-year-old maintenance mechanic, injured his left shoulder in the performance of duty. OWCP initially accepted the claim for shoulder sprain/strain. It subsequently authorized left rotator cuff repair, which he underwent on January 12, 2006.³ Appellant received appropriate wage-loss compensation and he returned to work on July 11, 2006.

On August 3, 2010 appellant filed a claim for a schedule award (Form CA-7). His surgeon, Dr. Coleman, had referred him for a functional capacity evaluation (FCE), which was performed on September 9, 2009 by Wayne MacMasters, a physical therapist, who found 11 percent upper extremity impairment for loss of motion in the shoulder. Dr. Coleman reviewed and signed the rating on September 28, 2009, noting that the 11 percent figure “seems reasonable.” However, this rating was derived under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001), which was no longer applicable for schedule award purposes.⁴

In a report dated September 14, 2010, the district medical adviser (DMA), Dr. Craig M. Uejo, reviewed the record and applied the sixth edition of the A.M.A., *Guides* (2008).⁵ He found that appellant had four percent impairment of the left upper extremity. Rather than rate appellant on loss of shoulder motion, Dr. Uejo provided a diagnosis-based impairment (DBI) rating under Table 15-5 (Shoulder Regional Grid), A.M.A., *Guides* 403 (6th ed. 2008).⁶ The rating was based on the diagnosis of a rotator cuff injury, full-thickness tear.

By decision dated September 16, 2011, OWCP granted a schedule award for four percent impairment of the left upper extremity. The award covered a period of 12.48 weeks from August 18 to November 13, 2009.

On February 26, 2011 appellant requested reconsideration, which OWCP received on March 7, 2011. He submitted April 12, 2005 and February 2, 2007 left shoulder magnetic resonance imaging (MRI) scans and Dr. Coleman’s treatment records from April 5, 2005 to September 28, 2009, including the January 12, 2006 operative report. All of the medical records OWCP received on March 7, 2011 were previously of record.

³ Dr. Martin R. Coleman, a Board-certified orthopedic surgeon, performed appellant’s January 12, 2006 surgery, which also included arthroscopic decompression, distal clavicle resection and superior labrum anterior-posterior (SLAP) repair.

⁴ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁵ Dr. Uejo is Board-certified in preventive medicine and occupational medicine.

⁶ Dr. Uejo questioned the reliability of Mr. MacMasters’ evaluation primarily because he was not a physician and because his September 9, 2009 measurements for shoulder range of motion (ROM) were inconsistent with Dr. Coleman’s August 19, 2009 examination findings, which noted that appellant’s shoulder showed “basically full range of motion.”

By decision dated March 17, 2011, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

OWCP has the discretion to reopen a case for review on the merits.⁷ An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸ When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

Appellant's February 26, 2011 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Appellant merely requested that OWCP reexamine his records or send him for another evaluation, if necessary. He also indicated that he had a painful cyst in his left upper extremity and did not want to undergo additional surgery. Lastly, appellant commented about the cost and inconvenience associated with having to repurchase his sick leave once OWCP accepted his claim. While his comments and concerns are duly noted, his February 26, 2011 request for reconsideration did not delineate the type of arguments that would warrant further merit review of his schedule award claim. Therefore, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).¹⁰

Appellant also failed to submit any "relevant and pertinent new evidence" with his February 26, 2011 request for reconsideration. As noted, all of the evidence that accompanied his request was previously of record. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹¹ Appellant did not provide any new medical evidence that might arguably impact the prior schedule award decision.¹² Consequently, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).¹³

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.608(b).

¹⁰ *Id.* at § 10.606(b)(2)(i) and (ii).

¹¹ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹² Appellant may submit additional medical evidence in support of an increased schedule award to OWCP, at any time.

¹³ 20 C.F.R. § 10.606(b)(2)(iii).

CONCLUSION

The Board finds that OWCP properly denied appellant's February 26, 2011 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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