



## **FACTUAL HISTORY**

On May 12, 1986 appellant, a 37-year-old grounds man, sustained a traumatic injury in the performance of duty while operating a jackhammer. OWCP accepted his claim for herniated nucleus pulposus at C5-6 and left muscle strain. It also accepted a herniated disc at C6-7 and bilateral carpal tunnel syndrome. In 1990 appellant received a schedule award for a two percent impairment of the right upper extremity and a nine percent impairment of the left.<sup>3</sup>

In 2011 appellant filed a claim for an increased schedule award. Dr. Timothy J. Renfree, a Board-certified orthopedic surgeon, found a five percent impairment of the right upper extremity due to loss of wrist motion (45 degrees dorsiflexion, 55 degrees volar flexion). He cited Table 15-32 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009).

An OWCP medical adviser found that Dr. Renfree rated appellant “without clear explanation.” He added that Dr. Renfree’s rating was incorrect as it did not follow the A.M.A., *Guides*. The medical adviser calculated a diagnosis-based impairment of two percent for entrapment neuropathy, citing Table 15-23 of the A.M.A., *Guides*.

On May 18, 2011 OWCP denied an increased schedule award on the grounds that the medical evidence did not demonstrate right upper extremity impairment greater than had been awarded. In a December 5, 2011 decision, an OWCP hearing representative affirmed.

Noting that he was repeatedly denied the five percent impairment rating given by Dr. Renfree, appellant requested reconsideration. OWCP received this request on April 9, 2012.

In an April 23, 2012 decision, OWCP denied appellant’s reconsideration request. It found that the evidence received since the hearing representative’s December 5, 2011 decision was irrelevant to the issue decided because it did not address whether appellant had greater than a two percent impairment of his right upper extremity.

On appeal, appellant contends that he still has pain and numbness in his right hand, causing him to drop things. He is also dropping things with his left. Appellant asked permission to have surgery on his left hand and receive an award of the five percent impairment rating found by Dr. Renfree.

## **LEGAL PRECEDENT**

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>4</sup> 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

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<sup>3</sup> The record indicates that appellant suffered a post-traumatic bronchial plexus nerve injury in 1981 and right forearm contusion in 1984, both in the performance of duty.

<sup>4</sup> 5 U.S.C. § 8128(a).

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.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> 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 the standards above. 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.<sup>7</sup>

### ANALYSIS

As the filing of this appeal leaves the Board no jurisdiction to review either OWCP's May 18, 2011 merit decision denying an increased schedule award or the hearing representative's December 5, 2011 merit decision affirming that denial the only issue the Board may review is whether OWCP properly denied appellant's reconsideration request.

OWCP received appellant's reconsideration request within one calendar year of the most recent merit decision. The request is therefore timely. The question for determination is whether this request met at least one of the three standards for reopening his case.

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 OWCP erroneously applied or interpreted it.

Appellant did not advance a new and relevant legal argument. He simply noted that he had repeatedly been denied the five percent impairment rating found by Dr. Renfree. OWCP reviewed and adjudicated that issue in both its May 18, 2011 decision and in the hearing representative's December 5, 2011 decision. Appellant offered no new argument.

Appellant did not submit any relevant and pertinent new evidence not previously considered by OWCP. As OWCP correctly found, none of the evidence received after the hearing representative's December 5, 2011 decision addressed whether appellant had more than a two percent impairment of his right upper extremity. Appellant submitted no new impairment evaluation to establish that he had an increased impairment.

The Board finds that appellant's reconsideration request did not meet any of the requirements for reopening his case. Accordingly, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's April 23, 2012 decision.

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<sup>5</sup> 20 C.F.R. § 10.606.

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608.

Appellant argued that he still has pain and numbness in his right hand, causing him to drop things. The question of whether he should receive an increased schedule award depends on a medical evaluation of his right upper extremity and the proper application of the sixth edition of the A.M.A., *Guides*. As for permission for appellant to have surgery on his left hand, the Board has no authority to grant it. Appellant may ask OWCP for authorization.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's reconsideration request.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2012  
Washington, DC

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

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

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