

FACTUAL HISTORY

On December 7, 2010 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a left elbow condition causally related to her federal employment. OWCP accepted the claim for left elbow lateral epicondylitis and left radial nerve lesion. Appellant received compensation for intermittent wage-loss commencing January 29, 2011. She underwent a left elbow medial debridement surgery on March 11, 2011.

On June 27, 2011 appellant submitted a claim for compensation (Form CA-7) indicating she was claiming a schedule award. In a report dated May 31, 2011, Dr. Thomas Lehman, an orthopedic surgeon, indicated that appellant was being treated for left wrist pain. He provided a history and results on examination, diagnosing left wrist sprain and likely triangular fibrocartilage complex (TFCC) degenerative changes. Appellant submitted a June 13, 2011 report from Dr. Christopher White, an orthopedic surgeon, who provided results on examination. Dr. White indicated that appellant was doing very well with respect to the elbow, with ongoing care for her hand and wrist.

In a letter dated July 11, 2011, OWCP advised appellant that to establish entitlement to a schedule award she needed to submit medical evidence with respect to a permanent impairment. By decision dated August 12, 2011, it determined that the evidence was insufficient to establish an employment-related permanent impairment under 5 U.S.C. § 8107.

On December 16, 2011 OWCP received an appeal request form indicating that appellant was requesting reconsideration. In an accompanying letter, appellant stated that she had been seen by a physician on October 29, 2011 and she believed the physician had mailed a copy of the report to OWCP.

By decision dated December 22, 2011, OWCP denied the application for reconsideration without merit review. It stated that there was no new medical evidence received.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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 evidence not previously considered by OWCP."³ Section 10.608(b) states that any application for reconsideration that does not meet at least one of the

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

³ 20 C.F.R. § 10.606(b)(2).

requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

In the present case, OWCP issued an August 12, 2011 decision finding that appellant was not entitled to a schedule award. On December 16, 2011 appellant submitted an application for reconsideration.

In this case, appellant did not submit any additional medical evidence. Although she referred to the submission of additional evidence, the record does not indicate that any new medical evidence was submitted prior to December 22, 2011. Therefore, the issue remains whether appellant has met any of the requirements of 20 C.F.R. § 10.606(b)(2).⁵

Appellant's December 13, 2011 letter does not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. She did not discuss a specific point of law or advance a legal argument. In addition, appellant did not submit any new and relevant evidence. The schedule award issue is a medical issue and, as previously noted, no new medical evidence was submitted prior to December 22, 2011. The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

On appeal, appellant indicated that her physician had delayed submitting new evidence, but OWCP now had received new medical evidence. The Board's jurisdiction is limited to evidence that was before OWCP at the time of the decision on appeal.⁶ Appellant may pursue a claim for an increased schedule award based on the submission of relevant medical evidence, as noted above.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ *See, e.g., E.L.*, Docket No. 11-1116 (issued December 19, 2011) (appellant submitted an application for reconsideration of a schedule award decision and submitted no new evidence or argument).

⁶ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 22, 2011 is affirmed.

Issued: October 17, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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