

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).

FACTUAL HISTORY

This case was previously before the Board. In a September 14, 2009 decision, the Board affirmed OWCP's January 15 and October 22, 2008 decisions denying appellant's request for a schedule award for permanent impairment to her upper extremities due to her accepted condition of tendinitis of both wrists. The Board found that the medical evidence of record did not establish that appellant's accepted condition caused any permanent impairment to a scheduled member of the body. The facts and law contained in the Board's decision are incorporated herein by reference.⁴

On September 14, 2010 appellant, through her representative, requested reconsideration. She submitted a September 7, 2010 report from Dr. Abraham Asmamaw, a Board-certified physiatrist, who diagnosed bilateral severe de Quervain's disease, extensor wrist tendinitis and carpal tunnel syndrome, secondary to overuse at work. Examination findings included a severe positive Finklestein's test. Wrists showed swelling and pain. Dr. Asmamaw opined that appellant continued to experience residuals from her accepted injury.

By decision dated April 21, 2011, OWCP denied modification of its prior decision denying appellant's claim for a schedule award. The claims examiner noted that the medical evidence did not provide any rating of permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On March 20, 2012 appellant again requested reconsideration. She submitted a March 20, 2012 report of a nerve conduction study/EMG from Dr. Navid Mostofi, a Board-certified neurologist, who stated that the study was mildly abnormal due to the presence of chronic denervation changes in bilateral C6-7 innervated muscles, suggestive of a mild chronic C6-7 radiculopathy. There was no evidence of carpal tunnel syndrome or ulnar neuropathy. Clinical correlation was recommended.

By decision dated May 10, 2012, OWCP denied appellant's reconsideration request on the grounds that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied

⁴ Docket No. 09-447 (issued September 14, 2009).

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered; or (3) constitute relevant and pertinent new evidence not previously considered by the OWCP.⁶ 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.⁷ 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.⁸ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

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).

Appellant's March 20, 2012 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). A claimant may be entitled to a merit review by submitting new and relevant evidence; however, appellant did not submit new and relevant medical evidence in this case.

Appellant's claim was denied on the grounds that the medical evidence of record did not establish that her accepted wrist condition caused any permanent impairment to the body or a rating of permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*. In support of her reconsideration claim, appellant submitted a March 20, 2012 diagnostic study from Dr. Mostofi. The report did not provide any opinion as to whether appellant sustained any permanent impairment of her arms due to her accepted injury. It did not provide any impairment rating under the A.M.A., *Guides*. Therefore the report is not relevant to the issue in this case and does not constitute a basis for reopening the case for merit review.¹⁰

The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 20, 2012 request for reconsideration.¹¹

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ Appellant, however, retains the right to file a claim for a schedule award based on new medical evidence, indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

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 May 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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