

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 4, 1998 appellant, then a 51-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 1998 he sustained a right shoulder injury after he was knocked to the floor by a patient. OWCP accepted his claim for right rotator cuff tear, right shoulder strain and right rotator cuff repair.

By decision dated August 1, 2002, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right arm.³

On March 6, 2013 appellant filed a claim for an additional schedule award (Form CA-7) under this claim, No. xxxxxx624. He submitted a December 5, 2012 functional capacity evaluation (FCE) from CORA Rehabilitation Clinic.

OWCP routed the December 5, 2012 evaluation and case file to a district medical adviser (DMA) for review and a determination on whether appellant sustained greater permanent impairment and the date of maximum medical improvement.

In reports dated April 18 and May 10, 2013, Dr. H.P. Hogshead, a medical adviser, used the findings from the FCE to rate seven percent impairment of the right arm. Because appellant had previously received an award for 17 percent impairment of the right arm, he was not entitled to an additional schedule award. The date of maximum medical improvement was noted as December 5, 2012.

By decision dated May 20, 2013, OWCP denied appellant's schedule award claim, finding that he did not establish greater impairment of the right arm. It noted that he had previously been rated at 17 percent right arm impairment and the medical adviser found 7 percent right arm impairment.

By letter dated June 27, 2013, appellant requested reconsideration of the schedule award determination stating that his right shoulder condition had worsened. He submitted billing statements from CORA Rehabilitation Clinic dated November 26, 2012 to March 15, 2013.

³ The Board notes that appellant had a prior work-related right arm injury for which he was awarded five percent permanent impairment of the right arm on June 22, 1983, claim No. xxxxxx103. The August 1, 2002 decision noted that appellant sustained 17 percent permanent impairment of the right arm and deducted the 5 percent already received for a total 12 percent permanent impairment of the right arm.

By decision dated July 17, 2013, OWCP denied appellant's request for reconsideration finding that he did not raise any substantive legal questions or submit new and relevant evidence.⁴

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his June 27, 2013 application for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant stated that his right shoulder injury had worsened. The underlying issue in this case is whether he established additional impairment of the right arm. That is a medical issue which must be addressed by relevant medical evidence.⁷ The only evidence received were billing statements from CORA Rehabilitation Clinic. This evidence is irrelevant to the issue as it does not address permanent impairment. A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, appellant failed to submit any new and relevant medical evidence addressing whether to establish greater impairment to his right arm.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). He did not show that OWCP erroneously applied or interpreted a specific point

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its July 17, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁵ *D.K.*, 59 ECAB 141 (2007).

⁶ *K.H.*, 59 ECAB 495 (2008).

⁷ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.⁸

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 July 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2014
Washington, DC

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

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

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

⁸ *Sherry A. Hunt*, 49 ECAB 467 (1998).