

On appeal, appellant argues that he had additional records that were unused in his second opinion evaluation and that there were defects in the second opinion physician's report.

FACTUAL HISTORY

On October 1, 1996 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed left shoulder tendinitis and muscle spasms as a result of duties of his federal employment. OWCP accepted his claim for left shoulder impingement syndrome on January 29, 1997. Appellant first requested a schedule award on June 27, 1997. By letter dated November 21, 1997, OWCP noted that he had not yet reached maximum medical improvement. Appellant again requested a schedule award on July 15, 1998. On August 3, 1998 OWCP informed him that it could not process his request for a schedule award until it received an impairment rating from his attending physician.

On June 10, 1999 OWCP denied appellant's request for a schedule award, noting that its district medical adviser had determined his left upper extremity impairment to be zero percent. Appellant requested an oral hearing before an OWCP hearing representative on June 18, 1999. By decision dated March 31, 2000, the hearing representative affirmed OWCP's June 10, 1999 decision. On November 28, 2001 appellant requested a schedule award. By letter dated March 8, 2002, OWCP noted that it had received evidence indicating the possibility of a recurrence and informed him of his right to file a claim for recurrence. On January 31, 2003 it noted that appellant was not entitled to a schedule award based on its previous decisions.

On August 14, 2010 appellant filed a claim for recurrence. OWCP accepted his claim for recurrence on September 13, 2010.

Appellant requested a schedule award on August 5, 2013. By letter dated August 6, 2013, OWCP requested an impairment determination calculated under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) from an attending physician. It asked that the physician provide a date of maximum medical improvement, the diagnosis upon which the impairment was based and a detailed description of any permanent impairment of the member or function which preexisted the injury. Appellant retired from his position on August 4, 2013.

In a report dated September 4, 2013, Dr. Philip H. Johnson, a Board-certified orthopedic surgeon, opined that, according to the sixth edition of the A.M.A., *Guides*, appellant had an 18 percent impairment of the upper left extremity or 11 percent whole body impairment. He stated that appellant had reached the maximum benefit of medical treatment. On examination, Dr. Johnson noted that appellant's range of motion of the left shoulder was 90 degrees of flexion, 30 degrees of extension, 80 degrees of abduction, 0 degrees of adduction and internal rotation of 12 degrees.

On November 7, 2013 OWCP forwarded the medical evidence of record and a statement of accepted facts to a medical adviser. It requested his opinion as to whether appellant's claim should be expanded to accept diagnoses of left shoulder tendonopathy and osteoarthritis. Dr. Daniel D. Zimmerman, a medical adviser, responded that appellant's claim should be expanded to accept these diagnoses on November 10, 2013. OWCP accepted these conditions on

November 15, 2013. Acceptance of appellant's shoulder impingement syndrome was changed to "other affections of shoulder region not elsewhere classified, left."

On November 15, 2013 OWCP forwarded Dr. Johnson's report and the medical evidence of record for review. On November 17, 2013 Dr. Zimmerman found that Dr. Johnson's impairment rating was deficient as it did not provide a history of injury or findings on examination. As such it could not be processed for range of motion limitations. Dr. Zimmerman recommended a second opinion examination.

On December 13, 2013 OWCP referred appellant to Dr. Wesley B. Sprinkle, Board-certified in physical medicine and rehabilitation, for a second opinion evaluation. It requested an impairment rating for appellant's left upper extremity.

In a report dated January 16, 2014, Dr. Sprinkle rated appellant's left upper extremity impairment as nine percent. He included a history of appellant's present illness and conducted examinations of his shoulders and upper extremities. Dr. Sprinkle noted that his *QuickDASH* score was 39. Based on Table 15-5 of the A.M.A., *Guides*, he had a class 1 impairment. Appellant's functional history indicated a grade modifier of one based on his *QuickDASH* score. His physical examination indicated a grade modifier of two based on a moderate decrease in the range of motion for shoulder abduction. Clinical studies indicated a grade modifier of four secondary to magnetic resonance imaging (MRI) scan evidence of a rotator cuff tear, biceps tendon pathology and advanced arthritic changes. The net adjustment was +4, which resulted in a final impairment rating of nine percent. Dr. Sprinkle stated that appellant was at maximum medical improvement. He noted that appellant was a 68-year-old male, who described appellant's pain level as "mild." Dr. Sprinkle further noted that Dr. Johnson had recommended shoulder replacement and that he agreed with appellant who elected not to consider this procedure.

Dr. Zimmerman reviewed Dr. Sprinkle's report on January 30, 2014. He agreed with the impairment rating of nine percent as correctly calculated under the sixth edition of the A.M.A., *Guides*.

By decision dated March 5, 2014, OWCP issued a schedule award for a nine percent impairment of appellant's left arm. The period of the award ran for 28.08 weeks of compensation.

On April 18, 2014 appellant requested reconsideration of the March 5, 2014 decision. He submitted a letter from Dr. Johnson dated April 9, 2014, who stated, "The rating that I gave [appellant] of 18 percent was denied by the review board and they sent him for a second opinion. I will rate him as [nine] percent. I will dictate further dictation on [appellant's] impairment rating once I find the sixth edition of the A.M.A., [*Guides*]."

By decision dated May 20, 2014, OWCP denied appellant's request for reconsideration. It found that he did not submit sufficient evidence to warrant review of the March 5, 2014 decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁸

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁹ Under the sixth edition, the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.¹²

³ *Id.* at § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *See Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- *Medical, Schedule Awards*, Chapter 3.700.3.a.3 (January 2010). This portion of OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁹ A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹⁰ *Id.* at 383-419.

¹¹ *Id.* at 411.

¹² *See Federal (FECA) Procedure Manual, Part 2 -- Claims, Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for left shoulder tendonopathy, localized primary left shoulder osteoarthritis and other affections of the shoulder region not elsewhere classified, left. On August 5, 2013 appellant requested a schedule award.

OWCP referred appellant for a second opinion evaluation to Dr. Sprinkle, who provided a January 16, 2014 report. In accordance with Table 15-5, shoulder regional grid, Dr. Sprinkle rated appellant's impairment as class 1. He applied the modifiers for functional history, physical examination and clinical studies found in Tables 15-7, 15-8 and 15-9, respectively. Appellant's functional history indicated a grade modifier of one based on his *QuickDASH* score. His physical examination indicated a grade modifier of two based on a moderate decrease in the range of motion for shoulder abduction. Clinical studies indicated a grade modifier of four secondary to MRI scan evidence of a rotator cuff tear, biceps tendon pathology and advanced arthritic changes. Using the net adjustment formula, Dr. Sprinkle modified appellant's position by +4, which resulted in a final impairment rating of nine percent.

Dr. Sprinkle properly explained his calculations under the sixth edition of the A.M.A., *Guides*. Dr. Zimmerman reviewed Dr. Sprinkle's report and agreed with his impairment rating. There is no other medical evidence of record in accordance with the sixth edition of the A.M.A., *Guides* supporting greater impairment. In particular, Dr. Johnson's September 4, 2013 rating did not provide findings adequate on examination to support his grade modifiers. His report is the only contemporaneous impairment rating of record but Dr. Zimmerman, the medical adviser, found Dr. Johnson's rating of 18 percent does not comport with the sixth edition A.M.A., *Guides*. The Board finds that the weight of the medical evidence establishes that appellant had a nine percent left shoulder impairment.

On appeal, appellant contends that Dr. Sprinkle's January 16, 2014 report contains numerous errors. The Board notes that Dr. Sprinkle incorrectly referred to appellant as a 68-year-old male, when in fact he was 59 at the time of the report. Appellant contended that Dr. Sprinkle diagnosed him as requiring a shoulder replacement, but the January 16, 2014 report contains no such diagnosis. The only reference to shoulder replacement is Dr. Sprinkle's note that appellant had elected not to consider the procedure. While the Board acknowledges that Dr. Sprinkle's report contained an incorrect age, this mistake is harmless to the rating of appellant's left shoulder impairment under the sixth edition A.M.A., *Guides*. As such, it does not negate the probative value of Dr. Sprinkle's correct impairment calculations.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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.¹³ Section 10.608(b) of OWCP's 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.¹⁴

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹⁵ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁷

ANALYSIS -- ISSUE 2

OWCP issued a March 5, 2014 decision granting appellant a schedule award for 9 percent impairment of his left arm. On April 18, 2014 appellant requested reconsideration of this decision. On May 20, 2014 OWCP denied his request.

The issue presented on appeal of the May 20, 2014 decision denying reconsideration is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his April 18, 2014 request for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The underlying issue in this case is whether appellant has more than nine percent impairment of the left upper extremity. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. With his request, appellant submitted a letter from Dr. Johnson that read, in relevant part, "The rating that I gave [appellant] of 18 percent was denied by the review board and they sent him for a second opinion. I will rate him as [nine] percent. I will dictate further dictation on [appellant's] impairment rating once I find the sixth edition of the A.M.A., [Guides]." Although new to the record, this evidence is not relevant and pertinent to the issue of whether appellant's schedule award for nine percent of the left upper extremity should be modified. Dr. Johnson stated that he would rate appellant at nine percent, the same rating as

¹³ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁴ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

¹⁵ See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

¹⁶ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

¹⁷ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

awarded on March 5, 2014. As such, it was not relevant and insufficient to require a merit review of his claim.

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

CONCLUSION

The Board finds that appellant has not established that he has more than a nine percent impairment of the upper left extremity, for which he received a schedule award. The Board further finds that OWCP properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 20 and March 5, 2014 are affirmed.

Issued: November 7, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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