

FACTUAL HISTORY

Appellant, a 46-year-old special agent, was involved in an employment-related motor vehicle accident (MVA) on April 26, 2010. OWCP accepted his claim for left hand contusion, left hand abrasion without infection, and right knee contusion.² Appellant did not miss any time from work due to his accepted injury.

On May 13, 2010 Dr. Siva Ayyar, Board-certified in occupational medicine, released appellant to full unrestricted work and stated that he had no ratable impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On November 7, 2013 appellant filed a claim (Form CA-7) for a schedule award.

On November 15, 2013 OWCP advised appellant that schedule awards were currently determined in accordance with the sixth edition of the A.M.A., *Guides* (2008). Because appellant's physician relied on the fifth edition of the A.M.A., *Guides* (2001), it arranged for a second opinion evaluation.

OWCP scheduled appellant for a December 11, 2013 appointment with Dr. Edward O. Leventen, a Board-certified orthopedic surgeon. Appellant did not appear for the scheduled appointment.

In a decision dated December 17, 2013, OWCP denied appellant's claim for a schedule award. It found that the medical evidence failed to demonstrate a measurable impairment. OWCP further noted that it had scheduled appellant for a second opinion evaluation and advised him of the appointment by letter dated November 21, 2013, but he failed to attend the appointment. It issued a similar decision on January 3, 2014 and enclosed a copy of the appointment letter.³

On December 31, 2013 appellant requested reconsideration. He indicated that neither he nor his then counsel had been properly notified by OWCP of the December 11, 2013 second opinion examination.

OWCP rescheduled appellant for a January 27, 2014 appointment with Dr. Leventen. However, on January 28, 2014, it advised him that the second opinion referral was procedurally incorrect because the medical evidence did not establish a ratable impairment. OWCP indicated

² Appellant had a preexisting right knee condition related to his military service. He underwent two previous right knee surgeries, including repair of the anterior cruciate ligament (ACL). A May 6, 2010 right knee x-ray revealed degenerative osteoarthritic changes and narrowing of the articular knee joint. There was also evidence of postsurgical changes with metallic screws in place.

³ OWCP sent the November 21, 2013 second opinion appointment letter to a Los Angeles, CA street address that appellant noted on his November 7, 2013 Form CA-7. However, on other occasions it had written appellant at an alternate address in Castaic, CA. The December 17, 2013 and January 3, 2014 decisions were both mailed to appellant's Castaic, CA address.

that, under the circumstances, it was appellant's responsibility to obtain an impairment rating from his treating physician, Dr. Ayyar. But by then, appellant had already seen Dr. Leventen.

In a January 28, 2014 report, Dr. Leventen noted that appellant injured his right knee in 1990 while in the Army and underwent ACL reconstruction, and subsequently developed low-grade chronic arthritis as a result of the injury and surgery. He also noted that appellant's present injury was the result of an April 2010 employment-related MVA. Appellant's right knee struck the dashboard and his left hand struck the windshield, shattering the glass. Dr. Leventen noted that appellant sustained a severe abrasion and laceration of the dorsum of the left hand. He also noted that a May 6, 2010 right knee x-ray revealed degenerative joint disease and postsurgical changes, and that appellant was diagnosed with a contusion of the knee following the MVA. Dr. Leventen further noted that appellant received conservative treatment following the April 2010 injury, and both the left hand and right knee improved. With respect to appellant's hand, Dr. Leventen indicated that he was left with cosmetic changes in the form of scars on the dorsum of the hand, but function and range of motion of all fingers returned to normal, as did grip strength. Appellant's right knee similarly improved, but appellant felt there was a slight difference from the initial service-connected injury. He reported occasional stiffness and swelling.

After examining appellant Dr. Leventen diagnosed healed abrasions dorsum of the left hand and wrist, without functional impairment. He also diagnosed status postcontusion of the right knee with prior history of ACL disruption and reconstruction. Dr. Leventen indicated that there was no significant change in status of appellant's right knee postcontusion, but there was preexisting and mild chronic loss of full flexion and full extension -- 5 degrees in each plane -- with no instability. He found zero percent impairment of both the left upper extremity and right lower extremity.⁴ Dr. Leventen indicated that appellant reached maximum medical improvement (MMI) as of January 1, 2011.

On March 27, 2014 Dr. Ellen L. Pichey, the district medical adviser (DMA), Board-certified in occupational medicine and family medicine, reviewed the record and found zero percent left arm impairment under Table 15-3, Wrist Regional Grid, A.M.A., *Guides* 395 (6th ed. 2008). She also found zero percent impairment of the right leg pursuant to Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509 (6th ed. 2008). Dr. Pichey agreed that appellant reached MMI on January 1, 2011.

In an April 2, 2014 merit decision, OWCP found that the medical evidence of record did not establish a ratable impairment of either the left arm or right leg. Accordingly, it denied appellant's claim for a schedule award.

On May 13, 2014 appellant requested reconsideration. He submitted a September 20, 2010 hand surgery consultation from Dr. Ron Y. Goldstein, an orthopedic hand surgeon with a specialty in plastic and reconstructive surgery, advised that in approximately five months appellant would be eligible for surgical reconstruction of the dorsal aspect of his left hand to address his multiple scars. Appellant also submitted a November 23, 2013 right knee x-ray and two photographs of his hand.

⁴ Dr. Leventen noted that the preexisting slight loss of right knee motion was not ratable.

The latest right knee x-ray revealed: (1) ACL graft surgery with graft tear; (2) tear of the posterior cruciate ligament; (3) arthrofibrosis; (4) old tear of the anterior and posterior horns of the medial meniscus; (5) multiple loose bodies in the knee joint; and (6) severe osteoarthritis of the medial and patellofemoral compartments and mild osteoarthritis of the lateral compartment.

Appellant argued that, although he had full function in his left hand, the grotesque disfiguring scar on the back of his hand caused severe embarrassment. He also argued that the latest x-ray, which Dr. Leventen did not consider, showed a gradual deterioration of his right knee condition. Appellant claimed that the April 26, 2010 employment-related MVA exacerbated his preexisting right knee arthritis.

By decision dated August 13, 2014, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁷ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain 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 new evidence not previously considered by OWCP.⁸ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

In its latest merit decision dated April 2, 2014, OWCP found that, under the A.M.A., *Guides* (6th ed. 2008), appellant did not have a ratable impairment of either the left upper extremity or the right leg. Dr. Leventen and Dr. Pichey, the DMA, both found there was no

⁵ This section provides in pertinent part: “[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.” 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607 (2014).

⁷ *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees' Compensation System (iFECS). *See also* Chapter 2.1602.4b.

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at §§ 10.607(b), 10.608(b).

ratable impairment. Appellant's own physician, Dr. Ayyar, similarly found no ratable impairment, albeit under an earlier version of the A.M.A., *Guides*. Consequently, OWCP denied appellant's claim for a schedule award.

In his reconsideration request of May 13, 2014, appellant argued that he should be compensated for disfigurement of his left hand and exacerbation of his preexisting right knee arthritis. Apart from the above-noted argument, the request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).¹⁰

Appellant also failed to submit any "relevant and pertinent new evidence" with his May 13, 2014 request for reconsideration. As noted, OWCP received photographs of appellant's hand and a November 23, 2013 right knee x-ray. This evidence does not specifically address the relevant issue on reconsideration, which is the extent of any impairment. Appellant's personal belief that the latest x-ray showed a gradual deterioration of his right knee condition will not suffice. He is not qualified to offer a medical opinion under FECA. Additionally, Dr. Goldstein's September 20, 2010 surgery consultation does not establish impairment. He merely advised of the possibility of surgical reconstruction five months hence.

Dr. Goldstein did not provide any evidence of functional impairment of the left hand/wrist. With regard to the claim that appellant's left hand was disfigured, FECA authorizes compensation only for "serious disfigurement," it is limited to disfigurement of the "face, head, or neck...."¹¹

There is not a permanent impairment for disfigurement to the left hand. Because appellant failed to provide any "relevant and pertinent new evidence" that might arguably impact the prior decision, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).¹² Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied further merit review with respect to appellant's May 13, 2014 request for reconsideration.

¹⁰ *Id.* at § 10.606(b)(2)(i) and (ii).

¹¹ 5 U.S.C. § 8107(c)(21).

¹² 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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