

appellant underwent a magnetic resonance imaging (MRI) scan of his right upper extremity which demonstrated a tear of the intra-articular portion of the long head of the biceps tendon.

OWCP denied appellant's claim on March 14, 2011 finding the evidence of record was insufficient to establish the medical condition is causally related to the accepted work event. Appellant requested reconsideration on April 12, 2011 and on July 21, 2011 OWCP accepted his claim for right biceps tendon rupture.

Dr. Kyle R. Flik, a Board-certified orthopedic surgeon, performed a right shoulder arthroscopy with debridement of the superior labrum and open exploration of the biceps tendon with lysis of adhesions and scar tissue. He found a tear of the superior labrum and an absent long head of the biceps tendon as well as scar tissue and partial tearing of the pectoralis major tendon. Dr. Flik stated that the biceps tendon was autotenodesed proximally and that appellant had abundant scar tissue. Appellant returned to modified work on December 9, 2011.

Dr. Flik examined appellant on March 14, 2012 for a permanent impairment rating. He stated that appellant had less discomfort and pain in his right elbow. Dr. Flik found that appellant had full range of motion of his elbow and glenohumeral joint. He found soreness to deep palpation in the biceps with full pronation and supination. Dr. Flik reported mild weakness compared to the left side. He opined that under the state worker's compensation guidelines appellant was entitled to 15 percent impairment for his long-headed biceps rupture requiring surgery and debridement. Dr. Flik further found that appellant had 5 percent impairment for muscle weakness resulting in an impairment rating of 20 percent.

Appellant requested a schedule award on August 6, 2012. OWCP responded on February 15, 2013 and requested additional medical evidence including a report which found that appellant had reached maximum medical improvement and a final rating of the permanent impairment in accordance with and including references to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹

In a decision dated July 17, 2013, OWCP denied appellant's request for a schedule award finding that he failed to submit medical evidence expressing his permanent impairment in accordance with the A.M.A., *Guides*.

Appellant requested reconsideration through a letter dated July 1, 2014 and a form dated July 2, 2014 and received by OWCP on July 7, 2014. He stated that he believed that Dr. Flik had submitted the necessary medical evidence and referenced the March 14, 2012 report. Appellant stated that Dr. Flik had submitted new evidence in accordance with the A.M.A., *Guides*. On June 24, 2014 Dr. Flik stated that he had amended his March 14, 2012 note. He removed references to the state workers' compensation system and stated that he was evaluating appellant for permanent impairment to his right upper extremity. Dr. Flik found that appellant demonstrated full range of motion of the elbow and glenohumeral area. He found soreness to

¹ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the second printing of the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5.a (February 2013).

deep palpation in the biceps with full pronation and supination. Dr. Flik also reported mild weakness. He stated, "I would recommend 15 percent scheduled loss of use for his long-headed biceps rupture requiring surgery and debridement. I would add 5 percent for his muscle weakness for a total of 20 percent scheduled loss of use."

By decision dated October 2, 2014, OWCP declined to reopen appellant's claim for consideration of the merits. It found that Dr. Flik's June 24, 2014 report was repetitious and cumulative of his March 14, 2012 report such that a review of the merits was not required.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.² Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or constitutes relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608(b) of OWCP regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁴

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

The Board finds that OWCP correctly denied reopening of appellant's claim for merit review on October 2, 2014.

Appellant timely requested reconsideration of the July 17, 2013 decision denying his claim for a schedule award on July 7, 2014. Appellant neither demonstrated that OWCP erroneously applied or interpreted a point or law, nor advanced a relevant legal argument not previously considered by OWCP.

In support of this request, appellant submitted Dr. Flik's March 14, 2012 note which had been amended on June 24, 2014. The Board finds that Dr. Flik's June 24, 2014 note does not contain new evidence and is therefore insufficient to require OWCP to reopen appellant's claim

² 5 U.S.C. §§ 8101-8193, 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608.

⁵ *M.E.* 58 ECAB 694 (2007).

for consideration of the merits. Dr. Flik amended the March 14, 2012 note to remove the references to the state workers' compensation guidelines. He did not provide any further information on June 24, 2014 which was not included in the March 14, 2012 report. As Dr. Flik's June 24, 2014 report was substantially duplicative of his March 14, 2012 report, the Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that appellant's request for reconsideration and supporting evidence did not comply with the requirements of section 10.606 of OWCP regulations and that OWCP properly declined to reopen appellant's claim for consideration of the merits of his schedule award claim.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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