

On appeal appellant argues that he is entitled to an additional schedule award based on the severity of his accepted consequential left shoulder.

FACTUAL HISTORY

This case has previously been before the Board. On June 26, 1986 appellant, then a 54-year-old meat cutter, filed a traumatic injury claim alleging that on that date he injured his right shoulder when he slipped and fell while pulling pork. OWCP accepted the claim for chronic impingement syndrome and right rotator cuff tear.

By decision dated May 4, 2000, the Board affirmed OWCP decisions dated October 27, 1997, February 10 and April 9, 1998 regarding the reduction of appellant's wage-loss compensation to zero effective April 3, 1997 due to his failure, without good cause, to participate in vocational rehabilitation.³

By decision dated November 2, 2004, OWCP expanded the acceptance of appellant's claim to include a consequential left rotator cuff tear.

By decision dated November 16, 2004, OWCP granted appellant a schedule award for 27 percent permanent impairment of his left arm.

On February 19, 2008 and July 7, 2013 appellant filed claims for additional schedule awards.

By letter dated July 17, 2013, OWCP informed appellant that he had previously been granted a schedule award for 27 percent permanent impairment of his left arm. It advised him as to the medical evidence required to establish entitlement to an additional schedule award for his left upper extremity.

In a letter dated July 29, 2013, OWCP requested Dr. Fanourios Ferderigos, appellant's treating Board-certified orthopedic surgeon, to provide an impairment rating. It advised Dr. Ferderigos that any impairment rating must be made using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). No response was received from Dr. Ferderigos.

By decision dated September 3, 2013, OWCP denied appellant's request for an additional schedule award.

In response to OWCP's request for an impairment rating, it received an October 14, 2013 report from Dr. Robert C. Henderson, a treating Board-certified orthopedic surgeon. Dr. Henderson noted appellant's primary problems as full thickness rotator cuff tear, knee osteoarthritis, localized primary osteoarthritis, localized pelvic region and thigh primary osteoarthritis, and shoulder region bursa disorder. Physical examination findings were provided and using Table 15-5, page 403 of the A.M.A., *Guides* found 13 percent impairment based on left full thickness rotator cuff tear. Next, using Table 475, page 534, he found 11 percent

³ Docket No. 98-1992 (issued May 4, 2000).

impairment for left shoulder range of motion restrictions. Dr. Henderson combined the impairment ratings which resulted in 24 percent left shoulder impairment rating. He noted that as appellant had previously been found to have 27 percent impairment, that no additional rating was due.

In a letter dated August 27, 2014, appellant requested reconsideration. He argued that he was entitled to an additional schedule award for his left upper extremity as he no longer has any use of his left shoulder. Appellant also requested assistance in finding a doctor to provide an updated impairment rating.

By decision dated September 8, 2014, OWCP denied reconsideration. It noted that appellant appeared to be requesting reconsideration as he needs a new treating physician as his physician retired. OWCP had not provided a new legal argument or submitted probative new evidence showing entitlement to an additional schedule award that his request was insufficient to warrant a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that 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 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.⁶ 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.⁷

ANALYSIS

On November 16, 2004 OWCP issued a decision granting appellant a schedule award for 27 percent impairment of his left arm. By decision dated September 3, 2013, it denied his request for an additional schedule award for his left arm. Appellant requested reconsideration of this decision on August 27, 2014, which OWCP denied in a nonmerit decision dated September 8, 2014.

⁴ *Supra* note 1. Section 8128(a) of FECA provides that 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 20 C.F.R. § 10.606(b)(3). *See J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ 20 C.F.R. § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

The issue presented on appeal 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 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant requested assistance in finding a doctor to provide an updated impairment rating as he believed he was entitled to an additional schedule award.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any evidence in support of his request.⁸ Thus, his opinion is not relevant to the issue of whether he is entitled to an additional schedule award.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant argues that he is entitled to an additional schedule based on the severity and limited use of his left shoulder. As noted above, he failed to meet any of the requirements for a merit review.

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).

⁸ The Board has noted *supra* that appellant submitted new evidence subsequent to the time OWCP issued its final decision. Such new evidence cannot be considered on appeal. OWCP did receive an October 14, 2013 report from Dr. Henderson subsequent to the September 3, 2013 OWCP decision denying his request for an additional schedule award. While this report is new, it is not relevant as Dr. Henderson determined that appellant had a 24 percent left upper extremity impairment using the sixth edition of the A.M.A., *Guides*. As this was less than the previously determined 27 percent left upper extremity impairment, Dr. Henderson opined no additional impairment rating was warranted.

⁹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2014 is affirmed.

Issued: July 1, 2015
Washington, DC

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

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

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