

June 21, 2000 when he fell on a wheel strut in the performance of duty. On December 7, 2000 OWCP accepted appellant's claim for medial and lateral meniscal tears in the right knee.

Appellant underwent a right knee arthroscopy with partial medial meniscectomy on January 12, 2001. He had previously received a schedule award for 20 percent permanent impairment of the right leg, attributable to the knee, on December 24, 1996.

On June 29, 2011 appellant filed a recurrence claim (Form CA-2a) alleging that on June 15, 2011 his right knee began to hurt. He noted that he retired on January 3, 2004 and that he currently required a knee replacement. OWCP accepted the recurrence claim on September 28, 2011.

OWCP subsequently expanded appellant's claim to include the additional conditions of tear of the right medial meniscus, tear of the right lateral meniscus, and traumatic arthroplasty of the right lower leg on April 8, 2013. Appellant underwent a right total knee replacement on August 30, 2013.

On June 19, 2014 appellant filed a claim for compensation (Form CA-7) requesting a schedule award. He submitted a report dated June 11, 2014 from Dr. Thomas Martens, an osteopath, evaluating his permanent impairment of his right lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² Dr. Martens found that appellant had reached maximum medical improvement and demonstrated 31 percent permanent impairment of his right lower extremity.

OWCP's medical adviser reviewed this report on August 7, 2014 and found that appellant had 31 percent impairment of his right lower extremity under the A.M.A., *Guides*. He noted that Dr. Martens did not provide documentation to support a class 3 impairment for knee replacement as there was no note of malposition of the prosthesis, no note of instability, and 123 degrees of range of motion which was not a ratable impairment. OWCP's medical adviser recommended a second opinion evaluation.

OWCP referred appellant for a second opinion evaluation with Dr. Jairo Puentes, a Board-certified physiatrist, on October 24, 2014. In his November 10, 2014 report, Dr. Puentes found that appellant had right knee pain which interfered with activity. He found that appellant had right knee flexion of 105 degrees, extension of 105 degrees, right lateral bending of 120 degrees and left lateral bending of 120 degrees. Dr. Puentes found no evidence of swelling in either knee. He reported that appellant's gait was within normal limits. Dr. Puentes diagnosed right knee osteoarthritis. He found that appellant had 31 percent permanent impairment of the right knee and 16 percent impairment of the left knee. Dr. Puentes concluded that appellant required no further treatment.

An OWCP medical adviser reviewed this report on March 12, 2015 and found that it was insufficient to calculate appellant's lower extremity impairment for schedule award purposes. He requested an additional report addressing the findings required by the A.M.A., *Guides*.

² A.M.A., *Guides*, 6th ed. (2009).

On March 26, 2015 OWCP referred appellant for a second opinion evaluation with Dr. James E. Butler, a Board-certified orthopedic surgeon. In a report dated April 13, 2015, Dr. Butler described appellant's history of injury and his medical history. He reviewed appellant's diagnostic studies and noted appellant's complaints of right knee pain with numbness, tingling, burning, and weakness. Dr. Butler found no positive stress test results and no effusion in appellant's right knee. He reported no atrophy and normal sensation and strength. Dr. Butler indicated that appellant had loss of range of motion with flexion of 118 degrees and extension of 0 degrees. He found that appellant had a total right knee replacement with a good result. Dr. Butler found no evidence of instability and normal range of motion and concluded that appellant had reached maximum medical improvement. He applied the net adjustment formula of the A.M.A., *Guides* and determined that appellant had 23 percent permanent impairment of his right lower extremity.

OWCP's medical adviser reviewed this report on May 8, 2015 and determined that appellant had an additional 3 percent impairment of his right lower extremity when the prior award of 20 percent was considered.

By decision dated August 5, 2015, OWCP granted appellant a schedule award for an additional three percent impairment of the right lower extremity.

Appellant requested reconsideration on December 16, 2015. He questioned why Dr. Butler's impairment rating was given the weight of the medical evidence rather than the 31 percent impairment awarded by Dr. Martens. Appellant questioned the methodology of the A.M.A., *Guides*, which resulted in 20 percent impairment for arthroscopic surgery and 23 percent permanent impairment for a total knee replacement. He asserted that his trauma, pain, rehabilitation, loss of walking, kneeling, standing, bending, and body posture was more than 31 percent of his lower extremity. Appellant requested that he receive the 31 percent permanent impairment found by Dr. Martens. In support of his request for reconsideration, appellant resubmitted the reports of OWCP's medical adviser, Dr. Martens' August 11, 2014 report, his October 5, 2012 MRI scan, and Dr. Butler's report.

In a decision dated February 29, 2016, OWCP declined to reopen appellant's claim for consideration of the merits as he failed to submit pertinent and relevant new evidence, new legal argument, or support that OWCP erroneously applied or interpreted a point of law.

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.³ Section 10.606(b)(3) of the Code of Federal Regulations provides 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 includes relevant and pertinent new evidence not previously considered by OWCP.⁴

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

Section 10.608 of OWCP's regulations provides 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.⁵ Section 10.607(a) of OWCP's regulations provides that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.⁶

ANALYSIS

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits of his permanent impairment and schedule award.

Appellant filed a timely request for reconsideration from OWCP's August 5, 2015 merit decision on December 16, 2015. However, he failed to submit any relevant and pertinent new evidence not previously considered in support of his request for reconsideration. Instead appellant merely resubmitted medical evidence already considered by OWCP in reaching the August 5, 2015 schedule award determination. As this evidence was previously of record and reviewed by OWCP in reaching the August 5, 2015 decision, it is not sufficient to require OWCP to reopen appellant's claim for consideration of the merits under 20 C.F.R. § 10.606(b)(3).⁷

Appellant also failed to present relevant new argument in support of his request for reconsideration or to show that OWCP erroneously applied or interpreted a specific point of law. He merely opined that his total knee replacement should have resulted in more than 23 percent impairment of his right lower extremity given that he received an impairment rating of 20 percent following arthroscopic surgery.⁸ The Board finds that appellant's statement alone is insufficient to require reopening of his claim for consideration of the merits.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608.

⁶ 20 C.F.R. § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

⁷ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁸ To the extent that a claimant asserts that a schedule award decision was erroneous based on his or her medical condition at that time, this would properly be considered a request for reconsideration. *See J.K.*, Docket No. 14-1082 (issued November 24, 2014).

ORDER

IT IS HEREBY ORDERED THAT February 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board