

asserts that he is entitled to a schedule award for 24 percent permanent impairment of this extremity based on his treating physician's opinion.

FACTUAL HISTORY

On June 30, 2005 appellant, then a 62-year-old resident agent-in-charge, filed an occupational disease claim (Form CA-2) alleging that on November 23, 2004 he first became aware of acute glenohumeral arthritis in his right and left shoulders and realized that his condition was caused or aggravated by his federal employment.² On January 31, 2005 he underwent right total shoulder arthroplasty performed by Dr. Xavier A. Duralde, an attending Board-certified orthopedic surgeon.

On June 29, 2005 appellant filed a schedule award claim (Form CA-7).

On July 18, 2005 OWCP accepted appellant's occupational disease claim for aggravation of localized primary osteoarthritis of the right shoulder. It authorized the January 31, 2005 right shoulder surgery.

In an August 30, 2005 medical report, Dr. Duralde examined appellant and opined that he had reached maximum medical improvement (MMI). Utilizing the fifth edition of the A.M.A., *Guides*, he determined that appellant's right shoulder surgery represented 24 percent impairment and his right shoulder stiffness constituted an additional 13 percent impairment, totaling 34 percent permanent impairment of the right upper extremity.

On September 29, 2005 Dr. James W. Dyer, a Board-certified orthopedic surgeon and district medical adviser, reviewed the medical record and Dr. Duralde's August 30, 2005 findings. Utilizing the A.M.A., *Guides*, he determined that appellant had 11 percent impairment based on loss of range of motion (ROM) and 24 percent impairment due to his arthroplasty, which he combined to calculate 32 percent impairment of the right arm. Dr. Dyer concluded that he had reached MMI on August 30, 2005, the date of Dr. Duralde's examination.

In an October 3, 2005 decision, OWCP granted appellant a schedule award for 32 percent permanent impairment of the right arm, paid during the period August 30, 2005 to July 29, 2007, for a total of 99.84 weeks of compensation. It found that the weight of the medical evidence rested with the opinion of Dr. Dyer who used the physical findings by Dr. Duralde.

By letter dated February 8, 2006, OWCP expanded the acceptance of appellant's claim for bilateral aggravation of localized primary shoulder osteoarthritis.

In a July 3, 2006 letter, appellant requested reconsideration regarding OWCP's schedule award decision. In an August 18, 2006 decision, OWCP denied further merit review of appellant's claim. It found that he did not submit any medical evidence to establish that he had greater permanent impairment of the right arm.

² Appellant retired from the employing establishment effective July 9, 2005.

In an August 23, 2006 letter, Dr. Duralde examined appellant and found that he had reached MMI on that date regarding arthritis in his left shoulder. He determined that appellant had nine percent impairment of the left upper extremity due to loss of ROM under the fifth edition of the A.M.A., *Guides*. Dr. Duralde concluded that based on his future need for replacement surgery, an additional 24 percent impairment would be included in his final impairment rating.

On September 22, 2006 Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon and district medical adviser, reviewed the medical record and Dr. Duralde's August 23, 2006 findings. Dr. Hogshead determined that appellant's loss of ROM resulted in seven percent permanent impairment under the fifth edition of the A.M.A., *Guides*. He concluded that appellant had reached MMI on August 23, 2006, the date of Dr. Duralde's impairment evaluation.

In a decision dated August 17, 2007, OWCP granted appellant a schedule award for seven percent permanent impairment of the left arm based on Dr. Hogshead's impairment rating. The period of the award ran from July 30 to December 29, 2007 for a total of 21.84 weeks of compensation.

On October 21, 2013 appellant underwent an authorized left total shoulder arthroplasty performed by Dr. Duralde. In a May 7, 2014 medical report, Dr. Duralde examined appellant and opined that he had 24 percent impairment of the left arm under the sixth edition of the A.M.A., *Guides*. He concluded that appellant had reached MMI following his work-related injury and subsequent surgery.

On June 24, 2014 appellant filed a claim for an additional schedule award (Form CA-7).

On July 1, 2014 another district medical adviser reviewed the medical record. The district medical adviser also reviewed Dr. Duralde's May 7, 2014 findings. The report noted appellant's previous schedule award for seven percent impairment of the left upper extremity and found that he had an additional 17 percent impairment, totaling 24 percent of the left upper extremity impairment. The report concluded that he had reached MMI on May 7, 2014.

In a July 15, 2014 decision, OWCP granted appellant a schedule award for an additional 17 percent permanent impairment to the left arm, totaling 24 percent permanent impairment of the left upper extremity. The award ran for 53.04 weeks from May 7, 2014 to May 13, 2015 and was based on the impairment ratings of Dr. Duralde and the district medical adviser.

On July 28, 2014 appellant requested an oral hearing before an OWCP hearing representative regarding the July 15, 2014 schedule award decision.

In an undated medical report, Dr. Duralde noted his previous 9 percent and 24 percent left arm impairment ratings. He combined these impairment ratings to calculate 31 percent left upper extremity impairment or 19 percent whole person impairment.

By decision dated April 14, 2015, an OWCP hearing representative set aside the July 15, 2014 decision³ and remanded the case for a district medical adviser to review Dr. Duralde's undated report and calculate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*, after which OWCP should issue a *de novo* decision on his schedule award claim.

On April 17, 2015 Dr. Hogshead reviewed the medical record and Dr. Duralde's undated report. He noted that the October 21, 2013 total left shoulder arthroplasty provided a good result. Dr. Hogshead related that a prior district medical adviser's 24 percent left upper extremity impairment rating was correct based on this final good result. Dr. Hogshead, however, found that Dr. Duralde's 31 percent left upper extremity impairment rating was not correct. He should not have combined his 24 percent and 9⁴ percent left upper extremity impairment ratings as appellant had a good surgical result based on his current level of function. Dr. Hogshead concluded that he had no additional left upper extremity impairment.

By decision dated April 24, 2015, OWCP denied appellant's claim for an additional schedule award for the left arm based on Dr. Hogshead's April 17, 2015 opinion.

By letter dated July 15, 2015, appellant requested reconsideration of this decision. Hospital records addressed appellant's left shoulder condition, October 21, 2013 total left shoulder arthroplasty, and discharge instructions.

A left shoulder x-ray report dated October 21, 2013 from Dr. Eric C. McClees, a Board-certified radiologist, provided an impression of shoulder prosthesis on the left in good alignment and position. No acute fractures or dislocations were identified.

In a July 1, 2015 report, Dr. Duralde provided appellant's history and findings on physical and x-ray examination. He reported that appellant was clinically doing very well status post his 2005 total right shoulder arthroplasty and 2013 total left shoulder arthroplasty. Dr. Duralde noted that he had signs of weakness on the right side consistent with rotator cuff deterioration. The radiolucent line on the left glenoid involved only one peg. The radiolucent line around the inferior Paganini was unchanged and did not appear to be progressive. Dr. Duralde concluded that appellant had pain in the shoulder joint region and recommended total shoulder joint replacement.

Appellant also resubmitted Dr. Duralde's undated report which stated that appellant had 31 percent left upper extremity impairment or 19 percent whole person impairment.

By decision dated December 4, 2015, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was repetitious, irrelevant, or immaterial.

³ The record indicates that appellant was paid schedule award compensation for the previously awarded 17 percent left upper extremity impairment.

⁴ It appears that Dr. Hogshead inadvertently stated that Dr. Duralde found seven percent left upper extremity impairment rating rather than nine percent as he noted a review of Dr. Duralde's undated report which stated that appellant had nine percent impairment of the left upper extremity.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁵ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

On July 15, 2015 appellant requested reconsideration of the April 24, 2015 decision that denied his claim for an additional schedule award for the left upper extremity. The underlying issue on reconsideration is medical in nature, whether appellant had a greater percentage of left arm permanent impairment than previously awarded.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered.

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. The hospital records and Dr. McClees' left shoulder x-ray report dated October 21, 2013 and Dr. Duralde's July 1, 2015 report addressed appellant's left shoulder condition, October 21, 2013 total left shoulder arthroplasty, and discharge instructions. This evidence did not provide an opinion as to whether he had left upper extremity impairment greater than the 24 percent already awarded. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁹

Appellant also resubmitted an undated report from Dr. Duralde which reiterated that appellant had 31 percent left arm impairment or 19 percent whole person impairment. However,

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Id.* at § 10.606(b)(3).

⁸ *Id.* at § 10.608(b).

⁹ *D'Wayne Avila*, 57 ECAB 642 (2006).

the Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰

The Board finds, therefore, that the hospital records and the reports of Drs. McClees and Duralde are insufficient to warrant further merit review of the claim.

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

On appeal, appellant argues the merits of his claim. As noted above, the Board lacks jurisdiction to review the merits of this case.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *James W. Scott*, 55 ECAB 606 (2004).