

FACTUAL HISTORY

Appellant, a 72-year-old former mail processing clerk, has an accepted occupational disease claim for bilateral carpal tunnel syndrome (CTS) and left hand/wrist tenosynovitis, which arose on or about February 21, 2012.³ She underwent an OWCP authorized right carpal tunnel release and flexor tenosynovectomy on April 20, 2015, followed by a left carpal tunnel release and flexor tenosynovectomy on July 27, 2015. Dr. Daniel P. Dare, a Board-certified orthopedic surgeon, performed both procedures.

On January 22, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated January 27, 2016, OWCP acknowledged receipt of appellant's recent Form CA-7 and advised her that she needed to submit a detailed narrative report from her treating physician addressing whether she had reached maximum medical improvement (MMI), and if so, whether she had a permanent impairment. It further advised that the rating should be prepared in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). OWCP afforded appellant at least 30 days to submit the requested medical evidence in support of her schedule award claim. Appellant did not respond within the time allotted.

By decision dated March 8, 2016, OWCP denied appellant's claim for a schedule award. It noted that it had previously advised appellant of the need to submit evidence in support of her claim, but that no evidence of permanent impairment had been received.

On March 18, 2016 appellant requested reconsideration. She submitted the appeal request form that accompanied OWCP's March 8, 2016 decision. Appellant noted that "Dr. Dare has been out of the country so unable to submit requested information."

Following its March 8, 2016 decision, OWCP received additional copies of medical records regarding appellant's July 27, 2015 left hand/wrist surgery. It also received duplicate copies of appellant's right upper extremity physical therapy treatment records covering the period April 21 through July 22, 2015.

In a March 25, 2016 decision, OWCP denied appellant's request for reconsideration without a merit review.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good

³ Effective December 31, 2015, appellant retired (nondisability).

⁴ 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2009).⁶

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and left hand/wrist tenosynovitis. Appellant underwent OWCP-approved surgeries on April 20 and July 27, 2015. She subsequently claimed a schedule award on January 22, 2016. In a letter dated January 27, 2016, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. However, appellant did not submit any evidence of permanent impairment as requested. Consequently, she has not provided medical evidence to establish that her accepted conditions caused a permanent impairment to a scheduled member. As such evidence has not been submitted, appellant has not established entitlement to a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁷ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁸ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁹ 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

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ 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).

⁸ 20 C.F.R. § 10.607.

⁹ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. *Supra* note 6 at Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). 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). *Id.* at Chapter 2.1602.4b.

considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

OWCP received appellant's request for reconsideration on March 18, 2016. Appellant utilized the appeal request form that accompanied OWCP's March 8, 2016 decision and included the handwritten notation "Dr. Dare has been out of the country so unable to submit requested information." Although timely, her March 18, 2016 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. The Board finds that she is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).¹²

Appellant also failed to submit any relevant and pertinent new evidence with her March 18, 2016 request for reconsideration. The issue on reconsideration was whether she had a ratable impairment of the upper extremities warranting a schedule award. OWCP denied appellant's schedule award claim because she had not submitted any medical evidence demonstrating permanent impairment. Following the March 8, 2016 decision, it received additional copies of her physical therapy records, as well as duplicate copies of medical records regarding her July 27, 2015 left hand/wrist surgery. However, providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹³ Because appellant failed to provide any relevant and pertinent new evidence regarding upper extremity permanent impairment, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁴ Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish a ratable impairment of the upper extremities warranting a schedule award. The Board further finds that OWCP properly declined to reopen appellant's case for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(3).

¹¹ *Id.* at § 10.608(a), (b).

¹² *Id.* at § 10.606(b)(3)(i) and (ii).

¹³ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁴ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the March 25 and 8, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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