

FACTUAL HISTORY

On April 2, 2007 appellant, then a 37-year-old carrier, filed an occupational disease claim (Form CA-2) alleging that on December 26, 2006 he first became aware of the connection between his right carpal tunnel syndrome and his employment duties.³ He continued to work. On July 6, 2007 OWCP accepted the claim for bilateral carpal tunnel syndrome.⁴ Appellant stopped work and received wage-loss compensation and medical benefits on the supplemental rolls as of June 28, 2007, and on the periodic rolls as of December 20, 2009 under OWCP File No. xxxxxx004.

In a February 27, 2016 report, Dr. Charles Xeller, an examining Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome, status post right release surgery. A review of a February 24, 2016 electromyogram/nerve conduction velocity (EMG/NCV) study showed distal latency relays, which he interpreted as bilateral mild-to-moderate carpal tunnel. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁵ he determined that appellant had five percent permanent impairment of the right upper extremity and five percent permanent impairment of the left upper extremity. In reaching this determination, he utilized Table 15-23, page 449 and assigned a grade 2 for history due to significant intermittent symptoms; an average grade 2 for physical findings of some weakness, no atrophy and functional scale.

On May 24, 2016 appellant filed a claim for an increased schedule award (Form CA-7).

In a June 11, 2016 report, the district medical adviser (DMA) noted the accepted conditions for this claim were bilateral carpal tunnel syndrome and he reviewed the medical evidence of record. He noted that the EMG/NCV study that Dr. Xeller had relied upon did not meet A.M.A. criteria for rating carpal tunnel syndrome. The DMA noted that Table 15-23, page 449 was not appropriate to rate appellant's impairment as the electrodiagnostic criteria for rating

³ On November 25, 2005 appellant filed an occupational disease claim (Form CA-2) alleging neck, right shoulder, and hand conditions, caused by his work duties. This claim was assigned OWCP File No. xxxxxx004. OWCP accepted the conditions of neck sprain, bilateral tenosynovitis, right carpal tunnel syndrome, right shoulder adhesive capsulitis, and right shoulder impingement syndrome as employment related. It authorized right carpal tunnel release surgery, which was performed on February 28, 2008, cervical surgery, which was authorized on September 14, 2010, and right shoulder surgery, which was performed on March 24, 2010. Under this claim OWCP granted appellant 5 percent permanent impairment for the left upper extremity and 22 percent permanent impairment for the right upper extremity by decision dated February 13, 2014. These awards incorporated findings of five percent permanent impairment of the right and left upper extremities due to the accepted bilateral carpal tunnel syndrome. By decision dated October 5, 2015, OWCP granted appellant an additional 3 percent permanent impairment for his right upper extremity in addition to the 22 percent previously awarded.

⁴ This was assigned OWCP File No. xxxxxx788. On July 21, 2008 OWCP administratively combined OWCP File No. xxxxxx004 with OWCP File No. xxxxxx788. OWCP File No. xxxxxx004 was designated as the master file number.

⁵ 6th ed. 2009.

median nerve impairment had not been met. Using Table 15-5 at pages 395 to 397 he found a bilateral upper extremity permanent impairment of one percent.⁶

In a June 27, 2016 supplemental report, the DMA clarified his prior opinion by noting that appellant had one percent left upper extremity permanent impairment and one percent right upper extremity permanent impairment using Table 15-3, pages 395 to 397.

By decision dated July 13, 2016, OWCP denied appellant's claim for an increased schedule award. It noted that appellant had previously received a schedule award for 5 percent left upper extremity permanent impairment and 25 percent right upper extremity permanent impairment. Based on the DMA's opinion that appellant had one percent left upper extremity permanent impairment and one percent right upper extremity permanent impairment, it found he was not entitled to an additional schedule for either upper extremity.

On October 25, 2016 OWCP received a form from appellant dated October 14, 2016 requesting reconsideration. Appellant subsequently submitted an August 29, 2016 report by Dr. Xeller in support of his request.

In the August 29, 2016 report, Dr. Xeller disagreed with the impairment rating found by the DMA. He explained that his impairment rating was based on a positive EMG study showing moderate carpal tunnel. Dr. Xeller again opined that appellant had five percent permanent impairment of the right upper extremity and five percent permanent impairment of the left upper extremity using Table 15-23, page 449.

By decision dated January 23, 2017, OWCP denied appellant's request for reconsideration. It found Dr. Xeller's August 29, 2016 report was duplicative of his prior February 27, 2016 report and, thus, insufficient to warrant a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ 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.⁸ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards,

⁶ The DMA assigned a class C for nonspecific bilateral wrist pain. Next he assigned a grade 1 for history using Table 15-7, page 406; a grade 1 for physical examination findings using Table 15-8, page 408; a grade 1 for clinical studies using Table 15-9, page 410, which resulted in a net adjustment of zero and no change in the grade.

⁷ 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.

⁸ 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).

⁹ 20 C.F.R. § 10.607(a).

OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

On October 25, 2016 OWCP received appellant's request for reconsideration of a July 13, 2016 decision denying his claim for an increased schedule award for both upper extremities. The underlying issue on appeal is medical in nature, *i.e.*, whether appellant had a more than five percent permanent impairment of each upper extremity due to his accepted bilateral carpal tunnel syndrome.

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 failed to submit any relevant or pertinent new evidence not previously considered. In support of his reconsideration request appellant submitted an August 29, 2016 report from Dr. Xeller reiterating that appellant had five percent permanent impairment of the right upper extremity and five percent permanent impairment of the left upper extremity using Table 15-23, page 449, due to his accepted bilateral carpal tunnel syndrome. However, this is the same opinion Dr. Xeller expressed in his February 27, 2016 report. 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.¹¹ The Board also notes that appellant has already received a schedule award for five percent permanent impairment of his right and left upper extremities due to his accepted bilateral carpal tunnel syndrome. As such Dr. Xeller's opinion is not relevant and pertinent new evidence in support of an increased schedule award.¹²

The Board accordingly finds that appellant has not met 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 new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

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

¹⁰ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

¹¹ *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *James W. Scott*, 55 ECAB 606 (2004).

¹² *Supra* note 8.

¹³ See *D.R.*, Docket No. 17-0620 (issued August 10, 2017).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2017 is affirmed.

Issued: October 25, 2017
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