



became aware that he had cervical and lumbar degenerative disease caused by repeated trauma while in the performance of his federal employment.<sup>2</sup>

On May 27, 1987 appellant provided a chronological history of his neck and back injuries beginning on July 3, 1960 as active duty National Guard, and continuing through his work as a firefighter, as a safety management intern, in the Coast Guard Reserves, and during his Naval civilian employment.<sup>3</sup>

By decision dated September 14, 1987, OWCP accepted that appellant's multiple work-related injuries had permanently aggravated his cervical degenerative disc disease. On September 29, 1987 it informed him that it accepted that both his cervical and lumbar degenerative disc disease had been permanently aggravated by his work-related injuries.

Appellant subsequently filed a traumatic injury claim (Form CA-1) alleging that, on August 28, 1990, he stepped into a grass covered hole and wrenched his low back causing injury to his sciatic nerve and left leg. He explained that he was returning to his office from Hanger 43 when the injury occurred.<sup>4</sup> On March 5, 2001 OWCP accepted the claim for lumbar sprain and noted that it was combining appellant's claim files.

On March 12, 2012 appellant filed a schedule award claim (Form CA-7).

By decision dated August 1, 2012, OWCP granted appellant schedule awards for 10 percent permanent impairment of his left upper extremity, and 6 percent permanent impairment of his left lower extremity. By decision dated February 21, 2014, it found that he had an additional 4 percent permanent impairment of his left upper extremity, totaling 14 percent permanent impairment, an additional 9 percent permanent impairment of his left lower extremity, totaling 15 percent permanent impairment, and 6 percent permanent impairment of his right lower extremity for which he received schedule awards.

On August 23, 2014 appellant filed a claim for an additional schedule award (Form CA-7). In a September 16, 2014 letter, OWCP requested additional medical evidence establishing greater permanent impairment than that which was previously awarded. By decision dated February 3, 2015, it denied appellant's claim for an additional schedule award, finding that he failed to submit sufficient medical evidence establishing increased permanent impairment.

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<sup>2</sup> This claim was assigned OWCP File No. xxxxxx214.

<sup>3</sup> The record contains evidence pertaining to several of appellant's other claims, which have not been combined with this case record. On August 18, 1981 appellant filed a traumatic injury claim (Form CA-1) alleging that on August 17, 1981 he injured his lower back unloading boxes. He filed a second traumatic injury claim on January 15, 1985 alleging injury to his lower back and right knee on January 8, 1985 after he stepped into an animal's den while crossing a grassy area. On March 24, 1986 appellant, filed a traumatic injury claim (Form CA-1) alleging that he hit his head on a steel overhead door jamb while ascending narrow stairs and injured his head and neck. This claim was accepted for cervical strain.

<sup>4</sup> That claim was assigned OWCP File No. xxxxxx916. OWCP File Nos. xxxxxx214 and xxxxxx916 have been administratively combined, with File No. xxxxxx214 serving as the master file.

Appellant requested reconsideration of the February 3, 2015 decision on February 24, 2015. On March 13, 2015 OWCP referred appellant for a second opinion evaluation scheduled for April 15, 2015. On March 27, 2015 appellant notified OWCP that he was undergoing surgery on April 3, 2015 and cancelled the second opinion evaluation. By decision dated March 30, 2015, OWCP informed appellant that, as he had undergone additional surgery, his claim for a schedule award was premature because he had not reached maximum medical improvement following his surgery.

On June 24, 2015 appellant again requested reconsideration and requested that OWCP reschedule a second opinion evaluation to determine his permanent impairment for schedule award purposes. OWCP scheduled a second opinion evaluation with Dr. Joseph McGowin, a Board-certified orthopedic surgeon, for August 26, 2015.

In his September 10, 2015 report, Dr. McGowin reviewed the medical records and performed a physical examination. He diagnosed chronic exacerbation of cervical and lumbar degenerative disc disease, chronic left C5 and C6 radiculopathy and chronic bilateral L5 and S1 radiculopathy. Dr. McGowin opined that appellant had nine percent permanent impairment of the left upper extremity and six percent permanent impairment of the left lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup>

OWCP's medical adviser reviewed this report on September 18, 2015 and found that appellant had no more than 10 percent permanent impairment of the left upper extremity and 6 percent permanent impairment of the left lower extremity. He found no permanent impairment in the right upper or lower extremities.

By decision dated November 24, 2015, OWCP found that appellant was not entitled to an additional schedule award.

In a letter received by OWCP on November 18, 2016, appellant requested reconsideration of the November 24, 2015 decision. He alleged a worsening of his injury-related condition. In support of his claim, appellant submitted April 7, 2016 cervical and lumbar spine magnetic resonance imaging (MRI) scans. Appellant's physician, Dr. Steven D. Grijalva, an orthopedic surgeon, completed an undated report and opined that appellant had progressive degeneration of his lumbar spine and that he exhibited severe deconditioning of his lower extremities due to his lumbar pain. He concluded that appellant had not reached maximum medical improvement and required further treatment.

By decision dated January 23, 2017, OWCP reviewed the merits of appellant's claim and found that he had not established additional permanent impairment of a scheduled member or function of the body, greater than that which was previously awarded.

On April 17, 2017 appellant requested reconsideration of the January 23, 2017 merit decision. He provided a letter dated April 10, 2017 in which he alleged that the January 23, 2017

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

decision was confusing and that his accepted conditions continued to worsen. Appellant asserted that impairment ratings were not necessary for OWCP to address his claim.

By decision dated May 3, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

### **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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

OWCP procedures provide that if a claimant is seeking an increased schedule award due to increased impairment or additional exposure, but is not contesting a prior schedule award, this submission should not be treated as a reconsideration request, but developed as a claim for an additional schedule award.<sup>10</sup>

### **ANALYSIS**

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).

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608.

<sup>9</sup> *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>10</sup> Even if the term reconsideration is used, when a claimant is not attempting to show error in the prior schedule award decision and submits medical evidence regarding an increased permanent impairment at a date subsequent to the prior schedule award decision, this submission should be considered a claim for an additional schedule award and not subject to the one-year time limitation for reconsideration. *G.E.*, Docket No. 17-0594 (issued September 14, 2017); *B.K.*, 59 ECAB 228 (2007); *Paul R. Reedy*, 45 ECAB 488 (1994); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (February 2016). This medical evidence should establish maximum medical improvement, describe the impairment in detail, and provide a percentage of impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5b (March 2017).

OWCP issued a January 23, 2017 merit decision denying appellant's claim for an additional schedule award as there was no medical evidence establishing that appellant had reached maximum medical improvement, that described his permanent impairment in detail, and that provided a percentage of his permanent impairment in accordance with its procedures.<sup>11</sup> Appellant timely requested reconsideration of the January 23, 2017 decision on April 17, 2017. With his submission, appellant alleged that OWCP had improperly denied his prior request for an increased schedule award. While appellant asserted that his condition had worsened, he did not submit any evidence with respect to increased permanent impairment or additional exposures, and therefore, OWCP properly reviewed his submission as a request for reconsideration rather than a request for an additional schedule award.<sup>12</sup>

As noted above, to require merit review the request for reconsideration must set forth arguments or evidence that shows 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.<sup>13</sup>

The Board finds that appellant has not submitted argument or evidence that OWCP erroneously applied or interpreted a specific point of law. Appellant generally argued that OWCP's decision was confusing, and provided his understanding of the evidence required to establish his schedule award claim.

While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>14</sup> Because appellant did not provide any support for his allegation regarding the deficiencies of OWCP's decision or his interpretation of the law, the Board finds that these arguments do not have a reasonable color of validity.<sup>15</sup> Appellant's argument is therefore insufficient to require OWCP to reopen his schedule award claim for consideration of the merits.

Appellant also did not provide any medical evidence in support of his contention that his condition continued to worsen such that he had increased permanent impairment of his left upper extremity or bilateral lower extremities. As he failed to provide relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied his request for reconsideration of the merits of his increased schedule award claim.

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<sup>11</sup> *Id.* at Chapter 2.808.5b (March 2017).

<sup>12</sup> *See F.K.*, Docket No. 17-0308 (issued December 21, 2017).

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *M.E.*, Docket No. 07-1189 (issued September 20, 2007).

<sup>15</sup> *F.K.*, Docket No. 17-0308 (issued December 21, 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 May 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2018  
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