United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
	)	**Docket No. 18-0667**
and	)	**Issued: August 1, 2019**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Monterey Park, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 8, 2018 appellant filed a timely appeal from a September 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied an increased schedule award.[1] Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issue in this case. Appellant also filed a timely appeal from a November 13, 2017 OWCP nonmerit decision which denied reconsideration of the denial of expansion of the acceptance of his claim. As more than 180 days has elapsed from OWCP's last merit decision, dated October 20, 2015, to the filing of this appeal, pursuant to FECA and sections 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the expansion issue in this case.

[1] Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated August 20, 2018, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0667 (issued August 20, 2018).

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than three percent permanent impairment of each lower extremity, for which he previously received schedule award compensation; and (2) whether OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On December 10, 2002 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that his job duties caused an injury to his Achilles tendon. He noted that he first became aware of his claimed condition on August 1, 2002 and related it to his federal employment on December 4, 2002. OWCP accepted the claim for bilateral calcaneous spurs. It also accepted the claim for sprain of the right shoulder rotator cuff and upper arm. OWCP authorized resection of the fractured bone and multiple bone fragments posterior of the left calcaneus, repair of Achilles tendon of the left ankle, resection of the bone posterior right calcaneus and repair of Achilles tendon of the right ankle with removal of a calcified bone. The procedures were performed on July 16, 2003 and March 3, 2004 by Dr. Brad A. Katzman, a Board-certified podiatrist.

By decision dated March 14, 2007, OWCP granted appellant a schedule award for one percent permanent impairment of the right arm and one percent permanent impairment of each leg.[3]

OWCP subsequently expanded acceptance of the claim to include: bilateral Achilles tendinitis; crushing injury of the ankle and foot; multiple and unspecified open wound of the leg without complications; and bilateral shoulder, upper arm, and rotator cuff sprain; and bilateral shoulder impingement syndrome. It authorized right and left shoulder open subacromial decompression with open rotator cuff repair performed on March 24, 2009 and October 26, 2010, respectively, by Dr. Scott Goldman, an attending Board-certified orthopedic surgeon.

On March 25, 2013 appellant returned to modified-duty work as a customer care agent. He stopped work on July 18, 2013 and filed a notice of recurrence (Form CA-2a) alleging that he sustained right knee, left hip, and lower back injuries on that day due to his accepted work-related

[2] Docket No. 08-1719 (issued January 6, 2009); Docket No. 17-0540 (issued July 26, 2017).

[3] By decision dated January 20, 2016, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the right upper extremity.

injuries.[4] Subsequently, appellant requested expansion of the acceptance of his claim to include conditions of the right knee, lower back, and left hip.

By decision dated January 14, 2014, OWCP denied expansion of appellant's claim, finding that the medical evidence of record failed to demonstrate that the diagnosed conditions were caused by the accepted work injuries. An OWCP hearing representative, by decision dated October 24, 2014 set aside the January 14, 2014 decision and remanded the case to OWCP for further development of the medical evidence. The hearing representative found that the August 15 and September 8, 2014 reports of Dr. Goldman provided an uncontroverted inference of causal relationship between the accepted work injuries and the claimed additional conditions. She directed OWCP to refer the medical evidence of record and a statement of accepted facts (SOAF) to an OWCP district medical adviser (DMA) to determine whether the claimed additional medical conditions resulted from his accepted work injuries.

On October 4, 2015 Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon serving as an OWCP DMA, reviewed the medical record and found that appellant's right knee, lower back, and left hip conditions were not causally related to the accepted work conditions.

OWCP, by decision dated October 8, 2015, again denied expansion of appellant's claim. It found that the weight of the medical evidence rested with Dr. Simpson's October 4, 2015 opinion.

OWCP subsequently received a May 27, 2016 report by Dr. Goldman. On physical examination of the ankles, Dr. Goldman reported no gross deformity and moderate tenderness over the Achilles tendon attachment to the posterior calcaneus bilaterally. He noted that appellant complained about pain and tightness with motion bilaterally. Dr. Goldman reported range of motion measurements which included zero degrees of dorsiflexion and 45 degrees of plantar flexion for the right ankle. He reported the same measurements for the left ankle. Dr. Goldman further reported no lymphadenopathy present in the bilateral upper and lower extremities. Lower limbs had dorsalis pedis and posterior tibialis artery that was 2+. Dr. Goldman found that reflexes on the right and left motor were 5/5 hip flexors, knee extensors (quadriceps), ankle invertors (tibialis anterior), great toe extensors (EHL), and ankle evertors (peroneus). Sensation was normal to all dermatomes. Deep tendon reflexes at the L4 patellar tendon and Achilles tendon were 2+ for the right and left. Dr. Goldman reviewed diagnostic test results. He diagnosed impingement syndrome of the right and left shoulders, tear of the right and left rotator cuffs, unspecified tear extent, left shoulder muscle weakness, history of right shoulder surgery on March 26, 2009 and left shoulder surgery on October 26, 2010, Achilles tendinitis of right and left lower extremities, and history of bilateral ankle surgical repair.

Dr. Goldman determined that appellant had 4 percent permanent impairment of the right shoulder and 13 percent permanent impairment of the left shoulder in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*

[4] By decision dated January 17, 2014, OWCP denied appellant's claim for a recurrence of disability commencing July 18, 2013. It found that the medical evidence of record was insufficient to establish that he was disabled due to a material change or worsening of his accepted work-related conditions. That decision was affirmed on October 24, 2014 by an OWCP hearing representative.

(A.M.A., *Guides*).[5] He also determined that appellant had five percent permanent impairment of the left lower extremity and four percent permanent impairment of the right lower extremity. Regarding impairment to appellant's bilateral lower extremities, Dr. Goldman identified a diagnosis of Achilles tendinitis that caused pain and reduced motion. Regarding the left lower extremity, he utilized Table 16-2, Foot and Ankle Regional Grid, on page 501, and determined that the identified diagnosis was a class 1 diagnosis under strain, tendinitis specifically involving the Achilles. Due to appellant's motion deficit, he had a default grade C impairment of five percent. Dr. Goldman assigned a grade modifier 0 for functional history (GMFH) as appellant had no gait derangement. He assigned a grade modifier 2 for physical examination (GMPE) under Table 16-7 on page 517, as appellant had moderate observed and palpatory findings. Dr. Goldman noted that a grade modifier for clinical studies (GMCS) was not relevant. Utilizing the net adjustment formula on page 411, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) = (0-1) + (2-1) + (N/A) = 0 to find a net adjustment of 0. Dr. Goldman noted that the net adjustment value did not change the default grade C impairment and, thus, appellant five percent permanent impairment of the left ankle. Regarding impairment to the right ankle, he again determined that the identified diagnosis was a class 1, five percent impairment under Table 16-2 due to motion deficit. Dr. Goldman also assigned a grade modifier 0 for GMFH as appellant had no gait derangement. He did not assign a grade modifier for because it was already used to assign the diagnostic class. Dr. Goldman again noted that a grade modifier for GMCS was not relevant. He utilized the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) = (0-1) to find a net adjustment of -1. Dr. Goldman indicated that the net adjustment value required movement of the grade C impairment value down to a grade B impairment value, yielding four percent permanent impairment of the right ankle.

On August 13, 2016 appellant filed a claim for a schedule award (Form CA-7). He submitted an impairment evaluation dated October 11, 2006 from Dr. Goldman. Dr. Goldman determined that appellant 10 percent permanent impairment of each ankle based on the fifth edition of the A.M.A., *Guides*.[6] He also determined that appellant had no permanent impairment of his shoulders.

On September 8, 2016 appellant, through counsel, requested reconsideration of OWCP's October 8, 2015 decision.

On September 29, 2016 OWCP routed Dr. Xeller's report, a SOAF, and the case file to Dr. Herbert White, Jr., an OWCP DMA Board-certified in occupational medicine, for review and determination regarding whether appellant sustained permanent impairment based on the sixth edition of the A.M.A., *Guides* and the date of MMI.

In a report dated October 2, 2016, Dr. White reviewed the SOAF and medical record. He agreed with Dr. Goldman's four percent right lower extremity impairment rating. Utilizing Table 16-2, page 506, Dr. White identified the diagnosis of Achilles tendinitis as a class 1 impairment with mild motion deficits. He assigned a grade modifier 0 for GMFH for normal gait under Table 16-6, page 516. Dr. White excluded a grade modifier for GMPE as it was used to

[5] A.M.A., *Guides* (6th ed. 2009).

[6] A.M.A., *Guides* (5th ed. 2001).

determine the position in the class based on Table 16-7, page 517. He also excluded a grade modifier for GMCS as there were none at MMI. Dr. White applied the net adjustment formula of (GMFH - CDX) (0-1=-1), page 521, to find a net adjustment of -1. He noted that a class 1 impairment, grade C, represented five percent impairment based on Table 16-2, page 501. Dr. White also noted that the net adjustment value did not change the grade from C to B and, thus, yielded four percent impairment of the right lower extremity. Regarding impairment to the left lower extremity, he again utilized Table 16-2, page 506 and identified the diagnosis of Achilles tendinitis as a class 1 impairment with mild motion deficits. Dr. White again assigned a grade modifier 0 for functional history in accordance with Table 16-6 and excluded grade modifiers for physical examination and clinical studies for the same reasons as noted above for the right lower extremity. He applied the net adjustment formula of (GMFH - CDX) (0-1=-1) to find a net adjustment of -1. Dr. White again determined that a class 1 impairment, grade C, represented five percent impairment based on Table 16-2, page 501 and that net adjustment value did not change the grade from C to B, thus yielding four percent impairment. He explained that the difference between his four percent left lower extremity impairment and Dr. Goldman's five percent left lower extremity impairment was that Dr. Goldman used a modifier for physical examination in his adjustment formula while he excluded it to determine the class placement for the diagnosis of Achilles tendinitis. Dr. White found that appellant had reached MMI on June 3, 2016.

By decision dated December 16, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that the evidence submitted was duplicative and irrelevant.

In a letter dated April 6, 2017, OWCP requested that Dr. Goldman review Dr. White's findings.

In a report dated April 24, 2017, Dr. Goldman agreed with Dr. White's four percent impairment rating for the left ankle Achilles tendon.

On April 28, 2017 OWCP requested that Dr. White clarify his findings in light of Dr. Goldman's April 24, 2017 report. In a supplemental report dated April 30, 2017, Dr. White repeated the exact findings and conclusions made in his October 2, 2016 report.

On January 10, 2017 appellant, through counsel, appealed the December 16, 2016 decision to the Board. The Board, by decision dated July 26, 2017, affirmed OWCP's December 16, 2016 nonmerit decision denying appellant's request for reconsideration of the merits of the claim.[7]

On August 22, 2017 OWCP requested that Dr. White clarify whether his four percent bilateral lower extremity impairment ratings included the prior one percent bilateral lower extremity impairment ratings previously received by appellant.

On August 25, 2017 Dr. White noted that his four percent impairment rating each for the right and left lower extremities included the previously awarded one percent impairment rating for each lower extremity. Thus, he advised that appellant had an additional three percent permanent

[7] Docket No. 17-0540 (issued July 26, 2017).

impairment of each lower extremity. Dr. White also advised that appellant had reached MMI on May 27, 2016.

By decision dated September 11, 2017, OWCP granted appellant a schedule award for an additional three percent permanent impairment of each lower extremity. The award ran for the period May 27 to September 24, 2016 for a total of 17.28 weeks, and was based on the May 27, 2016 and April 24, 2017 reports of Dr. Goldman and October 2, 2016 and April 30 and August 25, 2017 reports of Dr. White.

OWCP subsequently received an operative report dated July 27, 2017 by Dr. Katzman who diagnosed painful posterior heel spur, left foot, and performed resection of the bone, posterior left calcaneus.

OWCP also received reports dated July 25, August 1, and October 9, 2017 signed by Martha Castillo on behalf of Dr. Katzman in which she diagnosed posterior heel spur left, fasciitis on the left, post cerebrovascular accident, ankle tendinosis, other specified enthesopathies of unspecified lower limb, excluding foot, and abnormality of gait and mobility.

Additionally, OWCP received a report and daily notes dated June 19 through October 23, 2017 from Premier Physical Therapy.

Dr. Goldman, in a report dated September 15 2017, reiterated his prior diagnoses of impingement syndrome and tendinitis of the right and left shoulders, history of right shoulder surgery on March 26, 2009, and Achilles tendinitis of the right and left lower extremities. He also diagnosed calcaneal spurs of the right and left feet.

On October 10, 2017 appellant requested reconsideration of OWCP's denial of his request to expand the acceptance of his claim to include right knee, lower back, and left hip conditions.

In an October 20, 2017 report, Dr. Goldman reiterated the diagnoses set forth in his September 15, 2017 report.

By decision dated November 13, 2017, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,[8] and its implementing federal regulations,[9] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.[10] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[11]

With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[12] After the class of diagnosis (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[13] Under Chapter 2.3, the evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[14]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of each lower extremity, for which he previously received schedule award compensation.

OWCP accepted that appellant sustained bilateral calcaneous spurs, sprain of the right shoulder rotator cuff and upper arm, bilateral Achilles tendinitis, crushing injury of the ankle and foot, multiple and unspecified open wound of the leg without complications; bilateral shoulder, upper arm, and rotator cuff sprain, and bilateral shoulder impingement syndrome with resulting right and left ankle and right and left shoulder surgeries performed on various dates from July 16, 2003 through October 26, 2010.

Appellant's physician, Dr. Goldman, and OWCP's DMA, Dr. White, agreed that appellant had four percent permanent impairment of his right lower extremity due to his Achilles tendinitis under the diagnosis-based impairment methodology. The A.M.A., *Guides* provide that an Achilles tendinitis is a class 1 impairment with a default grade C impairment value of five percent of the lower extremity.[15] Dr. Goldman and Dr. White determined that appellant had grade 0 modifier for functional history. The physicians applied the net adjustment formula and determined that appellant's default impairment at class 1, grade C was four percent permanent impairment of the right lower extremity. The Board finds that the medical evidence does not establish more than

[10] *Id*. at § 10.404(a).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[12] *See* A.M.A., *Guides* 509-11 (6th ed. 2009).

[13] *Id.* at 515-22.

[14] *Id*. at 23-28.

[15] A.M.A., *Guides* 503, Table 16-2.

four percent impairment of appellant's right lower extremity for which he previously received a schedule award.[16]

Dr. Goldman and Dr. White, however, disagreed regarding the extent of permanent impairment to appellant's left lower extremity. Dr. Goldman found that appellant had five percent permanent impairment of the left lower extremity. He found that Achilles tendinitis was a class 1 impairment with a default grade C impairment value of five percent of the lower extremity.[17] Dr. Goldman determined that appellant had a grade 0 modifier for functional history and a grade 2 modifier for physical examination. He applied the net adjustment formula and determined that appellant's default impairment at class 1, grade C was five percent permanent impairment of the right lower extremity. Dr. Goldman explained that the net adjustment value of 0 did not require movement of the default grade C impairment value.

Alternatively, Dr. White found that appellant had four percent permanent impairment of the left lower extremity. As Dr. Goldman found that Achilles tendinitis was a class 1 impairment with a default grade C impairment value of five percent of the lower extremity.[18] He assigned a grade modifier 0 for functional history and applied the net adjustment formula of (GMFH - CDX) (0-1=-1) to find a net adjustment of -1 and determined that appellant's default impairment at class 1, grade C was four percent permanent impairment of the left lower extremity. Dr. White explained that he did not assign a grade modifier for physical examination as the findings were used placement of the identified diagnosis. If a grade modifier is used for the primary placement in the regional grid, it is not used again in the impairment calculation.[19]

The Board finds that Dr. White properly applied the A.M.A., *Guides* to find that appellant had no more than four percent permanent impairment of each lower extremity, for which he previously received schedule award compensation. As such, appellant has not met his burden of proof to establish increased permanent impairment greater than that which was previously awarded.

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.

LEGAL PRECEDENT -- ISSUE 2

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.[20] This discretionary authority, however, is subject to certain restrictions. For

[16] *See K.L.*, Docket No. 19-0090 (issued May 3, 2019); *D.K.*, Docket No. 18-0135 (issued August 20, 2018).

[17] *Supra* note 14.

[18] *Id.*

[19] A.M.A., *Guides* 515-16.

[20] 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.[21] 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).[22] Imposition of this one-year filing limitation does not constitute an abuse of discretion.[23]

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's application for review is untimely filed, OWCP must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.[24] If an application demonstrates clear evidence of error, it will reopen the case for merit review.[25]

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.[26]

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.[27]

[21] 20 C.F.R. § 10.607(a).

[22] *Supra* note 11 at Chapter 2.1602.4(b) (February 2016).

[23] *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[24] *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

[25] *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 21 at Chapter 2.1602.5 (February 2016).

[26] *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

[27] *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 21 at Chapter 2.1602.5(a) (February 2016).

The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.[28]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations[29] and procedures[30] establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.[31] The most recent merit decision regarding the denial of expansion of the acceptance of appellant's claim was OWCP's October 20, 2015 decision. As his request for reconsideration was not received by OWCP until October 10, 2017, more than one year after the October 20, 2015 decision, the Board finds that it was untimely filed. Because appellant's request was untimely, he must demonstrate clear evidence of error on the part of OWCP in having denied his traumatic injury claim.

The Board further finds that appellant's reconsideration request failed to demonstrate clear evidence of error on the part of OWCP in its last merit decision. As stated, OWCP denied expansion of the acceptance of appellant's claim.

Dr. Goldman's September 15 and October 20, 2017 reports diagnosed impingement syndrome and tendinitis of the right and left shoulders, history of right shoulder surgery on March 26, 2009, Achilles tendinitis of the right and left lower extremities, and calcaneal spurs of the right and left feet. He did not provide an opinion addressing whether the diagnosed conditions were caused by the accepted employment injury. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[32] This is insufficient to shift the weight of the medical evidence.

Likewise, Dr. Katzman's operative report dated July 27, 2017 is insufficient to shift the weight of the medical evidence. He diagnosed painful posterior heel spur, left foot, and performed surgery, but did not offer an opinion addressing whether the accepted employment injury caused the diagnosed condition and resultant surgery.[33]

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[28] *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

[29] 20 C.F.R. § 10.607(a); *see J.W.*, *supra* note 26; *Alberta Dukes*, 56 ECAB 247 (2005).

[30] *Supra* note 11 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

[31] 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

[32] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[33] *Id.*

Appellant also submitted a physical therapy report and daily notes dated June 19 through October 23, 2017. This evidence is immaterial as physical therapists are not considered physicians under FECA.[34] Therefore, the report and progress notes do not constitute probative medical evidence sufficient to demonstrate clear error by OWCP.[35]

Additionally, appellant submitted reports signed by Ms. Castillo on behalf of Dr. Katzman. As this evidence lacks adequate documentation that it was completed by a physician it does not constitute probative medical evidence.[36] Thus, the Board finds that her reports do not shift the weight in favor of appellant to demonstrate clear evidence of error on the part of OWCP.

The Board finds that the evidence submitted in support of the untimely request for reconsideration is insufficient to shift the weight of the evidence in favor of appellant's claim or to raise a substantial question that OWCP erred in its October 20, 2015 decision. Accordingly, the Board finds that OWCP properly denied appellant's reconsideration request, as it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of each lower extremity, for which he previously received schedule award compensation. The Board further finds that OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

[34] *See* 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *R.C.*, Docket No. 17-0198 (issued January 28, 2019); *R.S.*, Docket No. 15-0988 (issued August 12, 2015) (physical therapists are not competent to render a medical opinion under FECA).

[35] *Id.*

[36] *See R.I.*, Docket No. 09-2099 (issued May 4, 2010); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the November 13 and September 11, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 1, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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