

ISSUE

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

FACTUAL HISTORY

On October 17, 2011 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his left knee and foot when walking up steps while in the performance of duty. On November 8, 2011 he underwent left knee arthroscopic medial meniscal debridement. By decision dated November 21, 2011, OWCP accepted appellant's traumatic injury claim for left knee medial meniscus tear. It also authorized his recent left knee arthroscopic procedure.

On December 9, 2015 appellant filed a claim for a schedule award (Form CA-7).

In support of his claim, appellant provided a November 30, 2015 impairment evaluation from Dr. Gerald E. Dworkin, a physical medicine and rehabilitation specialist. Dr. Dworkin indicated that appellant reached maximal medical improvement. He noted appellant's history of injury and treatment and utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ Dr. Dworkin referenced Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509-11, and found 12 percent left lower extremity permanent impairment based on a diagnosis of meniscal injury.

In a May 16, 2016 report, OWCP's district medical adviser (DMA) found one percent left lower extremity permanent impairment under Table 16-3 based on a diagnosis of "partial meniscectomy."⁵

OWCP subsequently declared a conflict in medical opinion, and referred appellant to an impartial medical examiner (IME) to resolve the conflict.

In an August 9, 2016 report, Dr. Michael D. Wolk, a Board-certified physiatrist and IME, noted appellant's history of injury and treatment and determined that he had two percent left lower extremity permanent impairment under Table 16-3 based on a diagnosis of "partial medial meniscal injury status post meniscectomy."⁶

On December 8, 2016 a second DMA reviewed the relevant evidence, including the IME's August 9, 2016 impairment rating, and concurred with the finding of two percent left lower extremity permanent impairment under Table 16-3, A.M.A., *Guides*, page 509.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ *Id.* at 509.

⁶ *Id.*

By decision dated January 18, 2017, OWCP granted a schedule award for two percent permanent impairment of the left lower extremity, which amounted to 5.76 weeks of compensation beginning August 9, 2016.

On January 24, 2017 appellant, through counsel, requested a telephonic hearing, which was held on July 13, 2017.

In an August 31, 2017 report, Dr. Dworkin reiterated his impairment evaluation rating of 12 percent permanent impairment of the left lower extremity.

By decision dated September 26, 2017, the hearing representative affirmed the January 18, 2017 decision, finding that the additional August 31, 2017 report from Dr. Dworkin was insufficient to overcome the special weight accorded to IME Dr. Wolk.

On October 26, 2017 appellant, through counsel, requested reconsideration and attached copies of Dr. Dworkin's reports dated November 30, 2015 and August 31, 2017.

By decision dated November 2, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ If the request is timely, but fails to meet at least one of the

⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁸ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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. Federal (FECA) Procedure Manual, 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. *Id.* at Chapter 2.1602.4b.

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹¹

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).

The October 26, 2017 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, it did not advance any relevant legal arguments not previously considered by OWCP. The Board thus finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).¹²

Counsel also failed to submit any "relevant and pertinent new evidence" with the October 26, 2017 request for reconsideration. Attached to his request for reconsideration were identical copies of the November 30, 2015 and the August 31, 2017 reports which were previously considered by OWCP. Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹³ As these reports were previously considered and reviewed by OWCP in the prior decision, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁴

The Board accordingly finds that appellant has not met 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.¹⁵

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).

¹¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

¹⁵ *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *see A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board