



this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

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

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 16, 2002 appellant, then a 43-year-old community planning and development representative, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in a motor vehicle accident on March 19, 2002 while in the performance of duty. OWCP accepted appellant's claim for other joint derangement, lower leg, left; sprain of neck; sprain of shoulder and upper arm, unspecified site; tear of lateral meniscus of knee, current, left; tear of medial meniscus of knee, current; thoracic or lumbosacral neuritis or radiculitis note otherwise specified; and unspecified arthropathy, lower leg, left.

By decision dated July 6, 2005, OWCP granted appellant a schedule award for 30 percent permanent impairment of the left lower extremity for 86.4 weeks compensation to run from May 3, 2005 to December 28, 2006.

On August 30, 2005 appellant appealed the July 6, 2005 decision to the Board. In early September 2005, he was evacuated from New Orleans, Louisiana to Atlanta, Georgia following Hurricane Katrina. Appellant's schedule award was interrupted, and OWCP placed him on the periodic rolls. By decision dated December 9, 2005, the Board set aside the July 6, 2005 decision and remanded the case to OWCP to secure a medical report to address the degree of appellant's left lower extremity impairment.<sup>5</sup> On December 9, 2009 appellant elected Civil Service Retirement benefits, effective December 19, 2009.

OWCP undertook further medical development and, by decision dated January 13, 2010, granted appellant a schedule award for 34 percent permanent impairment of the left lower extremity. The period of the award was May 3 to October 1, 2005, resuming December 20, 2009 to June 6, 2011. The decision noted that appellant had previously been paid 152 days of schedule

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<sup>3</sup> The Board notes that following the October 23, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>4</sup> Docket No. 05-1801 (issued December 9, 2005).

<sup>5</sup> *Id.*

award compensation for permanent impairment of the left lower extremity and thus the period of the current award was December 20, 2009 to June 6, 2011.<sup>6</sup> Appellant was paid a single payment for December 20, 2009 through January 16, 2010 of \$3,251.73 and, following his request, on January 21, 2010 OWCP paid him the remainder of the schedule award in a lump sum totaling \$59,035.64.

On February 1, 2010 appellant filed schedule award claims (Form CA-7) for the right leg and right upper extremity.

On July 14, 2010 appellant requested reconsideration of the January 13, 2010 schedule award decision regarding the left lower extremity. By decision dated July 20, 2010, OWCP denied appellant's reconsideration request. It noted that he had submitted no medical evidence relevant to permanent impairment of the left lower extremity and found no basis for merit review of the January 13, 2010 decision.

By decision dated June 13, 2011, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity and 13 percent permanent impairment of the right lower extremity. At appellant's request, the full amount of the award was paid in a lump sum of \$33,682.53.

On February 16, 2013 appellant filed a schedule award claim (Form CA-7). By decision dated May 13, 2013, OWCP denied the claim, finding medical evidence submitted was insufficient to establish entitlement. Appellant filed another Form CA-7 schedule award claim on April 21, 2015.

By decision dated September 8, 2015, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity.

On January 11, 2016 and January 17, 2017 appellant filed additional Form CA-7 schedule award claims. Following development of the medical evidence, by decision dated June 8, 2017, OWCP found that appellant was not entitled to increased permanent impairment of a scheduled member. The decision had a typographical error indicating that appellant had previously been paid compensation for a total 64 percent left lower extremity impairment.

By decision dated July 24, 2017, OWCP noted that the June 8, 2017 decision contained a typographical error and indicated that appellant had received a left lower extremity schedule award for 34 percent permanent impairment. By decision dated July 25, 2017, it issued a corrected decision to reflect that he had previously been paid schedule award compensation for 34 percent permanent impairment of his left lower extremity.

On August 9, 2017 appellant requested a hearing before an OWCP hearing representative, which he changed to a request for review of the written record on September 5, 2017. He alleged that he had not received payment for his 34 percent permanent impairment of the left lower extremity.

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<sup>6</sup> OWCP paid appellant compensation on the periodic rolls through December 19, 2009.

By decision dated January 12, 2018, an OWCP hearing representative affirmed the July 25, 2017 decision. The hearing representative reviewed appellant's compensation payment history and confirmed that he had received schedule award compensation payments for 34 percent permanent impairment of the left lower extremity.<sup>7</sup>

On May 21, 2018 appellant requested reconsideration. He continued to assert that he had not been properly compensated for his left lower extremity impairment.

By decision dated June 6, 2018, OWCP denied appellant's reconsideration request.

Appellant again requested reconsideration on June 20, 2018, again asserting that he had not been properly compensated for his left lower extremity impairment. He submitted evidence previously of record. By decision dated October 23, 2018, OWCP denied appellant's reconsideration request.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>8</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>9</sup> 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.<sup>10</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.<sup>11</sup>

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<sup>7</sup> The fiscal records reviewed are found in the case record. On February 11, 2018 appellant requested a review of the written record. By decision dated March 20, 2018, a representative of OWCP's Branch of Hearings and Review denied his request for a review of the written record as he had previously received a written record review on the schedule award issue. The hearing representative also noted that consideration was given as to whether to grant appellant a discretionary hearing, but determined that the merit issue in appellant's case could equally be addressed by requesting reconsideration before OWCP or by an appeal with the Board.

<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.607.

<sup>10</sup> *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. 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 (iFECS). Chapter 2.1602.4b.

<sup>11</sup> 20 C.F.R. § 10.606(b)(3); *see G.L.*, Docket No. 19-0620 (issued September 3, 2019).

When a timely request 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.<sup>12</sup>

### ANALYSIS

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

Preliminarily, the Board finds that OWCP did not receive additional evidence of permanent impairment with either appellant's May 21 or June 20, 2018 reconsideration requests. The Board will therefore consider them to be proper reconsideration requests as opposed to claims for an increased schedule award.<sup>13</sup>

In support of his requests for reconsideration, appellant asserted that OWCP had not paid him a schedule award for 34 percent permanent impairment of the left lower extremity. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case does not constitute a basis for reopening a case.<sup>14</sup> With his reconsideration requests, appellant merely reiterated his assertion that he had not been compensated for his 34 percent left lower extremity permanent impairment. He had made this assertion previously, including prior to the last merit decision dated January 12, 2018 rendered by an OWCP hearing representative. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>15</sup>

Furthermore, appellant submitted evidence previously of record in support of his requests for reconsideration. As noted above, the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>16</sup> Therefore, he is not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>17</sup>

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.<sup>18</sup>

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<sup>12</sup> *Id.* at § 10.608.

<sup>13</sup> *C.S.*, Docket No. 19-0851 (issued November 18, 2019).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3); *F.D.*, Docket No. 19-0890 (issued November 8, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *Id.*

<sup>18</sup> *M.D.*, Docket No. 19-0725 (issued December 23, 2019).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23 and June 6, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 20, 2020  
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