

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
J.P., Appellant)	
)	
and)	Docket No. 20-0913
)	Issued: July 6, 2021
U.S. POSTAL SERVICE, POST OFFICE, Wakefield, RI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 20, 2020 appellant filed a timely appeal from a November 6, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated September 7, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 March 2, 2015 appellant, then a 49-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left wrist, forearm, and hip when he slipped on ice underneath snow and put his left hand out to break his fall while in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on March 2, 2015. On April 17, 2015 OWCP accepted the claim for a left hip contusion, left wrist sprain, and left lateral epicondylitis.

A March 20, 2017 medical report by Dr. Mark Coppes, a Board-certified orthopedic surgeon, indicated that appellant complained of intermittent left wrist pain and dysfunction and difficulty holding objects for any length of time in his left hand. Dr. Coppes reviewed appellant's history of injury and medical history, and conducted a physical examination. He indicated that an x-ray of appellant's left wrist revealed that he was slightly ulnar positive by 1 millimeter and noted appellant's accepted condition of a left wrist sprain. Dr. Coppes recommended that appellant undergo a functional capacity examination to evaluate his physical limitations due to his accepted March 2, 2015 employment injury.

A May 16, 2017 medical report by Dr. Frank Graf, a Board-certified orthopedic surgeon, reviewed appellant's medical history, medical records, and history of injury. Dr. Graf conducted a physical examination of appellant's left wrist, which revealed an increase in laxity in the anterior and posterior manipulation and radial and ulnar directed manipulation, prominent crepitation, and tenderness on deep palpation of the radiocarpal and radial navicular joints. He opined that appellant had left wrist ligamentous injuries and chronic instability at the left wrist and a probable navicular lunate tear. Dr. Graf stated that appellant was at a practical medical end point for his wrist condition and indicated that his wrist ligamentous injuries predisposed him to slowly progressive arthritic changes.

On August 12, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a letter to Dr. Graf dated August 29, 2017, OWCP requested that he provide a permanent impairment evaluation of appellant for the accepted conditions of left hip contusion, left lateral epicondylitis, and left wrist sprain. No response was received.

By decision dated March 26, 2018, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that appellant sustained a permanent impairment of a scheduled member due to his accepted March 2, 2015 employment injury.

On April 4, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 23, 2018, an OWCP hearing representative set aside OWCP's March 26, 2018 decision and remanded the case for further development. It found that the medical evidence of record documented left wrist residuals, and it ordered OWCP to send appellant's medical records to a district medical adviser (DMA) to opine on whether appellant sustained a permanent impairment due to his accepted March 2, 2015 work injury.

In an August 7, 2018 report, Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as OWCP's DMA, indicated that he reviewed the statement of accepted facts (SOAF) prepared by OWCP and appellant's medical records. He also reviewed appellant's history of injury and indicated that OWCP accepted appellant's conditions of left wrist sprain, left hip contusion, and left epicondylitis. Utilizing Dr. Graf's physical findings and the application of the diagnosis-based impairment (DBI) method of the sixth edition of the American Medical

Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² Dr. Harris referred to Table 15-3 on page 396 to calculate an eight percent permanent impairment of appellant's left upper extremity due to tear of the triangular cartilage of his left wrist. Using the range of motion (ROM) method of the A.M.A., *Guides*, he calculated a zero percent left upper extremity impairment and stated that appellant had full range of motion. Dr. Harris related that Dr. Graf did not document a physical examination of appellant's left elbow or hip in his medical report. He indicated that, as the DBI evaluation method yielded a higher result, appellant sustained an eight percent permanent impairment of the left upper extremity. Dr. Harris also advised that appellant reached maximum medical improvement (MMI) on May 16, 2017.

By decision dated August 15, 2018, OWCP expanded the acceptance of appellant's claim to include a triangular fibrocartilage tear of the left wrist.

In an August 21, 2018 memorandum to Dr. Harris, OWCP requested clarification of his August 7, 2018 DMA report. It provided an updated list of appellant's accepted conditions and requested details regarding how he calculated appellant's eight percent left upper extremity permanent impairment.

In an August 25, 2018 supplemental report, Dr. Harris indicated that, when using the DBI method to calculate appellant's permanent impairment, he assigned class 1 in Table 15-3 on page 396 based on appellant's diagnosis of triangular fibrocartilage tear, as he had mild symptoms. For net adjustments, he selected a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for clinical studies (GMCS) of 1 to calculate a total of eight percent permanent impairment of the left upper extremity.

By decision dated September 7, 2018, OWCP granted appellant a schedule award for eight percent permanent impairment of the left upper extremity. The period of the award ran for 24.96 weeks from May 16 through November 6, 2017.

On February 19, 2019 appellant, through his then-representative, requested reconsideration. He contended that the DMA did not address appellant's lower extremity residuals, as appellant's previously accepted claims from his other OWCP case files were not provided in OWCP's SOAF. Appellant's then representative requested that OWCP to submit a new SOAF that included appellant's claims from his other OWCP case files to a DMA along with Dr. Graf's May 16, 2017 medical report for a new impairment rating. He additionally stated that if the DMA could not provide a rating then appellant should be referred for a second opinion examination.

Appellant submitted a January 24, 2019 medical report by Dr. Graf, which provided bilateral shoulder physical examination findings.

By decision dated April 24, 2019, OWCP denied appellant's reconsideration request, finding that it neither raised substantive legal questions, nor included new and relevant evidence.

On September 9, 2019 appellant, through his then-representative, requested reconsideration. In an attached statement, he indicated that the DMA did not address appellant's

² A.M.A., *Guides* (6th ed. 2009).

lower extremity residuals, as his accepted claims from his other OWCP case files were not provided in OWCP's SOAF. Appellant's then representative contended that, because all of appellant's claims had the same claims examiner and Dr. Graf mentioned appellant's lower extremity impairments in his May 16, 2017 medical report, the claims examiner was aware of appellant's other claims and, therefore, had the obligation to further develop the issue of appellant's lower extremity impairments. He argued that OWCP shares a responsibility in the development of the evidence and to see that justice is done and, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the issues in the case. Appellant's then-representative indicated that he has requested schedule awards in appellant's other cases, but has yet to receive a decision. He requested for OWCP to submit a new SOAF that included appellant's claims from his other OWCP case files to a DMA along with Dr. Graf's May 16, 2017 medical report for a new impairment rating and stated that, if the DMA could not provide a rating, then appellant should be referred for a second opinion examination.

By decision dated November 6, 2019, OWCP denied appellant's reconsideration request, finding that it neither raised substantive legal questions nor included new and relevant evidence.

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.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the

³ 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).

⁴ 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).

⁵ *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 (iFECS). *See* Chapter 2.1602.4b. When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, a Sunday, or a legal holiday. *See also* Chapter 2.1602.4.

⁶ *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.⁷

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).

In appellant's September 9, 2019 reconsideration request, appellant's former representative contended that OWCP should have solicited an impairment rating for appellant's lower extremity residuals. He also asserted that the accepted claims from appellant's other OWCP case files were not provided in OWCP's SOAF. These arguments were raised in appellant's February 19, 2019 reconsideration request. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁸ Moreover, these arguments are irrelevant to the underlying issue as they pertain to another claim.⁹ Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁰

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered. His request for reconsideration was not accompanied by evidence other than his former representative's statement discussed above. As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

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.¹²

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).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *C.R.*, Docket No. 18-1102 (issued February 22, 2019).

⁹ *Supra* note 4.

¹⁰ *D.P.*, Docket No. 19-0964 (issued October 2, 2019).

¹¹ *See A.G.*, Docket No. 20-0290 (issued June 24, 2020).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board