

ISSUE

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

FACTUAL HISTORY

On July 2, 2013 appellant, then a 25-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2013 she injured her right knee and right hand when she slipped and fell on wet grass while in the performance of duty. OWCP accepted her claim for internal derangement of the right knee, right knee sprain, lumbar sprain, and right wrist contusion. Appellant stopped work on July 1, 2013. OWCP paid her wage-loss compensation on the supplemental rolls from August 16, 2013 through April 5, 2014 and on the periodic rolls commencing April 6, 2014.³

On April 10, 2017 OWCP issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled from work. It determined that she had the capacity to earn wages as a human resources adviser at the rate of \$1,340.00 a week. By decision dated May 17, 2017, OWCP adjusted appellant's compensation benefits to reflect her wage-earning capacity as a human resources adviser. By decision dated February 28, 2018, an OWCP hearing representative affirmed its May 17, 2017 decision.

On May 16, 2018 Dr. Cohen diagnosed right chondromalacia of patella. He noted that appellant had significant femoral nerve impairment, notable quadriceps weakness and atrophy, and full-thickness defect in the patellofemoral joint. Dr. Cohen advised that appellant reached maximum medical improvement (MMI). He opined that appellant had 12 percent permanent impairment of the right lower extremity.

On July 11, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a July 19, 2018 development letter, OWCP requested that Dr. Cohen submit an impairment evaluation addressing whether appellant had reached MMI and, if so, the extent of any permanent impairment in accordance with the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ It afforded him 30 days to submit the necessary evidence.

On June 17, 2020 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). It requested that he review Dr. Cohen's May 16, 2018 report and provide an opinion on permanent impairment

³ On February 12, 2014 Dr. David B. Cohen, a Board-certified orthopedist, performed an authorized right knee arthroscopic partial lateral meniscectomy and chondroplasty of the medial femoral condyle.

⁴ A.M.A., *Guides* (6th ed. 2009).

under the standards of the A.M.A., *Guides*.⁵ On June 24, 2020 Dr. Harris reviewed the impairment rating by Dr. Cohen. He found the date of MMI to be May 16, 2018, the date of Dr. Cohen's examination. The DMA noted that Dr. Cohen calculated 12 percent impairment of the right lower extremity, but did not provide any explanation for his impairment. He noted that under the diagnosis-based impairment (DBI) method, the diagnosis was partial lateral meniscectomy of the right knee. The DMA referred to Table 16-3⁶ (Knee Regional Grid), page 509, for partial lateral meniscectomy, right, which resulted in three percent permanent impairment of the right lower extremity.

On August 4, 2020 OWCP requested that Dr. Cohen review the DMA's June 24, 2020 medical report, which differed from his opinion regarding the final permanent impairment rating and provide a supplemental report with his opinions and comments.

OWCP subsequently received additional evidence. Appellant submitted a copy of the July 19, 2018 development letter from OWCP with handwritten notes from an unidentified author stating, "see note 11/30/15" and "I discussed in this note: R.O.M. is full."

By decision dated November 5, 2020, OWCP granted appellant a schedule award for three percent permanent impairment of the right lower extremity. The award ran for 8.64 weeks from May 16 through July 15, 2018 and was based on the May 16, 2018 report of Dr. Cohen and the June 25, 2020 DMA report.

OWCP subsequently received a July 26, 2021 report, wherein Dr. Cohen noted that he treated appellant in follow-up for her right knee chondromalacia patella with persistent femoral nerve weakness. Findings on examination revealed an antalgic gait with a flexed knee, right knee tenderness throughout the patellofemoral joint, and atrophy of the right quadriceps. Dr. Cohen noted that lateral and sunrise x-rays of the right knee demonstrated considerable narrowing at the patellofemoral joint down to about a millimeter with subchondral cysts in the patella. He diagnosed work-related injury, chondromalacia patellae of the right knee, and right muscle atrophy of the lower extremity. Dr. Cohen recommended physical therapy.

On August 24, 2021 appellant requested reconsideration and submitted additional evidence.

In a work status note dated July 26, 2021, Dr. Cohen diagnosed "RT Knee" and indicated that the injury was work related. He noted that there was no change in permanent restrictions.

OWCP also received physical therapy notes dated July 27 and 29, 2021.

By decision dated August 30, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁵ *Id.*

⁶ *Id.* at 509-10.

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 or her 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 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 her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹²

In support of her request for reconsideration, appellant submitted a report and work status note, from Dr. Cohen, both dated July 26, 2021. Appellant also submitted physical therapy treatment notes. While this evidence is new, it is not relevant as it does not address appellant's entitlement to a schedule award for permanent impairment of the right lower extremity. The Board

⁷ *Supra* note 1 at § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁸ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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). *Id.* at Chapter 2.1602.4b.

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

¹¹ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³ As such, this evidence is insufficient to warrant merit review.

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

Appellant may request a schedule award or increased schedule award at any time based on evidence of new exposure, or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹³ *J.R.*, Docket No. 19-1280 (issued December 4, 2019); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).