

struck it on a post while drawing his service handgun while in the performance of duty. OWCP accepted the claim for other specified mononeuropathies of the right upper limb and contusion of the right forearm.

In an October 25, 2018 report, Dr. Michael Mrochek, a physiatrist and physical medicine and rehabilitation specialist, noted that appellant had been referred by his treating physician, Dr. Cheryl Ledford, a Board-certified orthopedic surgeon, for a permanent impairment rating. He related appellant's history of injury on November 14, 2016 and noted that while his condition had improved, he continued to have symptoms of numbness and tingling in the small and ring finger of the right hand. Dr. Mrochek examined appellant and opined that, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² Table 15-23, page 449, he had two percent permanent impairment of the right upper extremity due to his accepted condition of right forearm contusion and other specified mononeuropathies of the right upper limb. He explained that the rating was based on a *QuickDASH* disability score of 23 percent, a grade modifier for clinical studies (GMCS) of one for test findings of conduction delay, a grade modifier for functional history (GMFH) of one for history of constant symptoms, and a grade modifier for physical examination (GMPE) of one for physical examination findings. Dr. Mrochek concluded that appellant had a net adjustment of two, equaling two percent permanent impairment of the right upper extremity.

In medical reports dated September 11 and December 11, 2018, Dr. Ledford reiterated her findings and diagnoses of neuropathies of the right upper limb and contusion of the right forearm. In work capacity evaluations (Form OWCP-5c) of even date, she found that appellant could perform his usual work duties without restrictions.

On November 15, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On April 26, June 18, and August 27, 2019 OWCP referred appellant's case, along with a statement of accepted facts (SOAF), to a district medical adviser (DMA) to provide an impairment rating in conformity with the A.M.A., *Guides*.

In a September 30, 2019 report, Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as the DMA, reviewed the SOAF and medical record, including Dr. Mrochek's October 25, 2018 report. He disagreed with Dr. Mrochek's findings and found that appellant did not have a ratable impairment as a result of his accepted conditions of other specified mononeuropathies of the right upper limb and contusion of the right forearm. Dr. Slutsky related that Dr. Mrochek incorrectly determined appellant's impairment for entrapment/compression neuropathy using Table 15-23, page 449, of the A.M.A., *Guides*. He explained that since appellant sustained blunt trauma to his ulnar nerve at the elbow, it was more appropriate to rate his injury as contusion of the proximal ulnar nerve at the elbow using Table 15-21 (Peripheral Nerve Impairment) beginning on page 436 rather than entrapment. Dr. Slutsky concluded that under the diagnosis-based impairment (DBI) method for contusion of the right ulnar nerve at the elbow, appellant had zero percent impairment rating. He determined that appellant reached maximum medical improvement (MMI) on October 25, 2018, the date of Dr. Mrochek's examination.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated October 16, 2019, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body as a result of his accepted November 14, 2016 employment injury.

In an October 30, 2019 medical report, Dr. Boone noted that appellant continued to experience symptoms with extreme hypersensitivity and pain anytime there was contact over the ulnar nerve at the elbow. He related that he also continued to have a sensory loss over the right ulnar dermatome. Dr. Boone diagnosed mononeuropathies of the right upper limb and contusion of the right forearm. In a Form OWCP-5c of even date, he reiterated his diagnoses.

In a November 1, 2019 report, Dr. Mrochek noted that appellant presented for a second impairment rating. He disagreed with the DMA's finding that appellant had no ratable impairment and incorrectly based his opinion on Table 15-23, page 449, of the A.M.A., *Guides*. Dr. Mrochek opined that, based on objective findings documented in a June 12, 2017 EMG/NCV study, it was most appropriate to use the entrapment/compression neuropathy impairment table. He maintained that his October 25, 2018 impairment rating report was accurate and represented appellant's functional loss due to his November 14, 2016 employment injury.

In a November 19, 2019 letter, Dr. Boone noted that appellant was recently reevaluated in his office. He again indicated that he conducted electrodiagnostic testing on the right ulnar nerve, which revealed moderate right cubital tunnel syndrome. Dr. Boone observed that appellant's ulnar nerve was clearly compromised in the right cubital tunnel. He opined that Dr. Mrochek's impairment rating was accurate and further noted that appellant suffered from continuous sensitivity in the cubital tunnel, which was aggravated by any pressure or contact in that area.

On November 20, 2019 appellant requested reconsideration. In a November 15, 2019 statement, he reiterated his account of the accepted November 14, 2016 employment incident. Appellant noted that he was still suffering with symptoms and of his accepted employment injury. He noted that both Drs. Mrochek and Boone provided new information regarding his impairment rating.

On December 9, 2019 OWCP requested clarification from the DMA with regard to his September 30, 2019 report and whether new medical reports would alter his impairment rating.

In a January 18, 2020 report, the DMA noted that there was no disagreement that appellant sustained an injury to his right ulnar nerve at the elbow secondary to blunt trauma with subsequent neurapraxia. He indicated, however, that the disagreement with other ratings was whether appellant had documented signs of compressive neuropathy. The DMA noted that none of the examiners performed elbow flexion test, which was a provocative test for the diagnosis of cubital tunnel syndrome. He explained that traumatic nerve injuries were rated using section 15.4(e) of the A.M.A., *Guides*. The DMA further explained that "impairment from traumatic injury to peripheral nerves is defined by the specific nerves involved, and the associated severity of sensory motor and deficits. This section is not used for nerve entrapments since nerve entrapments are not isolated traumatic events." He opined that appellant's impairment rating should be performed for contusion of the proximal ulnar nerve at the elbow using Table 15-21 for a peripheral nerve injury rather than entrapment. The DMA concluded that appellant had no ratable impairment.

By decision dated February 18, 2020, OWCP denied modification of the October 16, 2019 decision.

In a March 5, 2020 report, Dr. Mrochek again disputed the DMA's finding that appellant had no ratable impairment. He reported that appellant still experienced numbness and tingling in his right hand in the small and ring fingers, as well as tenderness at the right elbow. Dr. Mrochek opined that the DMA continued to insist that the ulnar neuropathy appellant had experienced was not able to be rated in the entrapment/compression neuropathy. He diagnosed contusion of the right forearm and other specified mononeuropathies of the right upper limb. Dr. Mrochek concluded that appellant had a net adjustment of zero, equaling one percent permanent impairment of the right upper extremity. OWCP also received an illegible Form OWCP-5c of even date from Dr. Mrochek.

In a March 5, 2020 e-mail, appellant notified OWCP that Dr. Mrochek was unwilling to perform a flexion examination. He requested a new doctor.

On March 31, 2020 appellant requested reconsideration. In a March 25, 2020 statement, he again requested a new doctor and also requested that someone other than the DMA review his appeal.

On June 5, 2020 OWCP again requested clarification from the DMA with regard to his January 18, 2020 report and whether Dr. Mrochek's March 5, 2020 report would alter his impairment rating.

In a June 22, 2020 report, the DMA reported that Dr. Mrochek, in his March 5, 2020 report, failed to provide additional information that would change his impairment rating. He maintained that his January 18, 2020 impairment rating was accurate.

By decision dated July 22, 2020, OWCP denied modification of the February 18, 2020 decision.

In a July 3, 2020 statement, appellant noted that he was disagreeing with the DMA's findings. He related his understanding that Dr. Mrochek was not utilizing or conducting OWCP preferred examinations. Appellant reiterated his request to be evaluated by a different doctor and that a new DMA be assigned to review his claim for an impairment rating.

OWCP received a form report from Dr. Mrochek, indicating that he disagreed with the DMA's findings.

On December 31, 2020 appellant requested reconsideration. In a December 31, 2020 statement, he again requested to be evaluated by a different doctor. Appellant contended that numerous documents and letters he submitted to OWCP were not appearing in his file. He requested to have his claim evaluated by a different claims examiner.

By decision dated January 20, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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 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 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).

Appellant's December 31, 2020 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant did not allege a relevant new legal argument and appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. The underlying issue in this case is medical in nature.

³ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *Supra* note 6.

Appellant submitted a form report from Dr. Mrochek, indicating his disagreement with the DMA's findings. While this evidence is new, it is not relevant, as it is substantially similar to prior evidence of record. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.⁹ 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).¹⁰

The Board accordingly finds that appellant has not met 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.

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).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁹ *G.J.*, Docket No. 20-0071 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020).

¹⁰ *Id.*