

picked up a tub of mail and heard and felt a snap while in the performance of duty.² OWCP accepted the claim for right rotator cuff tear. On February 26, 2015 appellant underwent OWCP authorized right shoulder arthroscopy, debridement of a superior labral anterior posterior (SLAP) 1 lesion, extensive anterior and posterior synovectomy, and an open repair of the recurrent rotator cuff tear.

On November 1, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated January 3, 2019, OWCP denied appellant's claim for a schedule award, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to the accepted employment injury.

On August 28, 2019 appellant filed another Form CA-7 claim for a schedule award.

In a report dated September 17, 2019, Dr. Florian Miranzadeh, an osteopathic physician Board-certified in family medicine, determined that appellant had a 39 percent right upper extremity permanent impairment using the range of motion (ROM) methodology, referencing Table 15-34 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ He indicated that appellant had reached maximum medical improvement (MMI) on May 16, 2016.

On November 22, 2019 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), requested that OWCP obtain a supplemental report from Dr. Miranzadeh as he did not provide three independent ROM measurements as required by the A.M.A., *Guides*. He also found that using the diagnosis-based impairment (DBI) methodology for distal clavicle resection appellant had 12 percent permanent impairment of the right upper extremity, pursuant to Table 15-5, page 403 of the A.M.A., *Guides*.

On July 17, 2020 OWCP referred appellant to Dr. Allan M. Brecher, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated August 20, 2020, Dr. Brecher indicated that he had reviewed appellant's medical records and statement of accepted facts (SOAF). He conducted three measurements of appellant's right shoulder which revealed flexion of 70 degrees, abduction of 45 degrees, internal rotation of 30 degrees, external rotation of 30 degrees, extension of 10 degrees, and adduction of 10 degrees. Dr. Brecher applied the A.M.A., *Guides* and concluded that appellant had 24 percent permanent impairment of the right upper extremity. He noted that the DBI methodology was inapplicable, and that appellant had reached MMI on May 16, 2016.

In a December 10, 2020 report, the DMA, Dr. Katz, indicated that he reviewed the SOAF and appellant's medical records. He applied the A.M.A., *Guides* and concurred with Dr. Brecher's right upper extremity permanent impairment rating of 24 percent. Dr. Katz noted that appellant

² OWCP previously accepted that appellant sustained neck and right shoulder rotator cuff sprains on July 6, 2010, under OWCP File No. xxxxxx886. By decision dated April 26, 2013, OWCP granted a appellant a schedule award for 19 percent permanent impairment of the right upper extremity.

³ A.M.A., *Guides* (6th ed. 2009).

had previously been granted a schedule award for 19 percent permanent impairment of the right upper extremity. Thus, appellant was entitled to a schedule award for an additional five percent right upper extremity permanent impairment. He also concluded that she reached MMI on August 20, 2020, the date of Dr. Brecher's examination.

By decision dated January 4, 2021, OWCP granted appellant a schedule award for five percent permanent impairment of her right upper extremity in addition to the 19 percent previously awarded under File No. xxxxxx886. The period of the award ran from August 20 through December 7, 2020.

On March 25, 2021 appellant requested reconsideration of her January 4, 2021 schedule award.

By decision dated April 5, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim.

On May 12, 2021 appellant again requested reconsideration. She related that Dr. Brecher had explained to her that she had 19 percent permanent impairment of her right upper extremity prior to her second injury. Appellant stated that he indicated that she had sustained a different injury to the same region, and now had a 24 percent permanent impairment of the right upper extremity.

By decision dated June 1, 2021, OWCP denied appellant's request reconsideration of the merits of her 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.⁴

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.⁵

⁴ 5 U.S.C. § 8128(a); *see J.P.*, Docket No. 20-0192 (issued July 6, 2021); *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).

⁵ 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).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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).

On March 25 and May 12, 2021 appellant requested reconsideration. Her March 25, 2021 request did not show that OWCP had erroneously applied a specific point of law, and it did not advance a relevant legal argument. In her May 12, 2021 request for reconsideration, appellant alleged that while she had previously received a 19 percent schedule award for permanent impairment of her right upper extremity, her current rating was 24 percent permanent impairment. Therefore, she was currently entitled to an additional schedule award for 24 percent permanent impairment of her right upper extremity. The underlying issue, however, is medical in nature. A lay opinion is not relevant medical evidence sufficient to warrant a higher rating of permanent impairment. It is appellant's burden to submit sufficient medical evidence to establish the extent of permanent impairment.⁹ Her argument on reconsideration request is therefore irrelevant and insufficient to warrant a merit review. Therefore, the Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. 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).¹⁰

The Board further finds that appellant did not submit additional evidence with her requests for reconsideration. As she failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

⁶ *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 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). *See* Chapter 2.1602.4(b). 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.

⁷ *Id.* at § 10.608(a); *see also J.P., supra* note 4; *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *J.P., id.*; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *J.K.*, Docket Nos. 19-1420 & 19-1422 (issued August 12, 2020); *Annette M. Dent*, 44 ECAB 403 (1993).

¹⁰ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see J.C.*, Docket No. 21-0453 (issued December 8, 2021).

¹¹ *See R.D.*, Docket No. 21-0472 (issued December 2, 2021); *A.G.*, Docket No. 20-0290 (issued June 24, 2020).

The Board, accordingly, finds that appellant did not meet 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

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

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 April 5 and June 1, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2023
Washington, DC

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

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

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

¹² *J.C.*, *supra* note 10; *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 a request 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 request without reopening the case for a review on the merits).