

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

A.G., Appellant)	
)	
and)	Docket No. 23-0045
)	Issued: February 15, 2024
U.S. POSTAL SERVICE, BRANDON POST OFFICE, Brandon, MS, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 12, 2022 appellant filed a timely appeal from May 2, June 24, August 16, and September 26, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP) and a September 23, 2022 nonmerit decision of OWCP. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to the accepted left shoulder employment injury; (2) whether appellant has met her burden of proof to establish disability from

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 26, 2022 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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.*

work for the periods September 23 through November 5, 2021 and March 31 through June 3, 2022 causally related to her accepted left shoulder employment injury; (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a); and (4) whether appellant has met her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On August 27, 2019 appellant, then a 45-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her left shoulder, including rotator cuff strain and swelling, causally related to factors of her federal employment due to handling mail and engaging in other repetitive motion duties with her left arm. She noted that she first became aware of her claimed condition on April 7, 2018, and first realized its relation to her federal employment on August 5, 2019. Appellant stopped work on August 24, 2019. OWCP initially accepted her claim for left shoulder tendinitis/lesions and it paid her wage-loss compensation on the supplemental rolls, effective October 12, 2019.

On August 8, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On October 14, 2020 OWCP referred appellant's case to Dr. Alan J. Goodman, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that he provide an opinion on the permanent impairment of appellant's left upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ In an October 22, 2020 report, Dr. Goodman utilized Table 15-5 (Shoulder Regional Grid), beginning on page 401 of the sixth edition of the A.M.A., *Guides* and applied the diagnosis-based impairment (DBI) rating method. He determined that appellant's left shoulder acromioclavicular (AC) joint injury fell under a class of diagnosis (CDX) of a Class 1 impairment with a default value of 10 percent. Dr. Goodman assigned 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 2. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (2 - 1) = +1$, which resulted in a grade D or 11 percent permanent impairment of the left upper extremity. Dr. Goodman opined that application of the ROM rating method would not provide a greater permanent impairment finding than application of the DBI rating method. He concluded that appellant had 11 percent permanent impairment of the left upper extremity.

In a November 6, 2020 report, Dr. Sergey S. Dzugan, a Board-certified orthopedic surgeon, reported physical examination findings, and diagnosed traumatic incomplete tear of the left rotator cuff, left shoulder tendinitis, and acute left shoulder pain. He recommended left shoulder surgery. Appellant stopped work on November 17, 2020 to undergo left shoulder surgery. A surgical report of the same date reveals that Dr. Dzugan, performed left shoulder arthroscopy with lysis of adhesions.

³ A.M.A., *Guides* (6th ed. 2009).

By decision dated November 17, 2020, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. The award ran for 34.32 weeks from April 8 through December 4, 2020, and was based on the impairment rating of Dr. Goodman, the DMA.

Appellant continued to visit Dr. Dzugan for post-surgery care and, on March 8, 2021, she returned to full-duty work as a rural carrier.

In a May 24, 2021 report, Dr. Dzugan indicated that appellant presented with a chief complaint of left hand pain/numbness “with radiation of the pain up to her shoulder sometimes.” Appellant reported numbness in her left thumb, index, and middle fingers. Dr. Dzugan noted that the physical examination revealed diminished sensation to light touch in the left median nerve distribution, and diagnosed left carpal tunnel syndrome, adhesions of the left shoulder joint, and ankylosis of the left shoulder. He recommended electromyogram/nerve conduction velocity (EMG/NCV) testing to confirm the diagnosis.

In early-June 2021, appellant requested expansion of the acceptance of her claim to include left carpal tunnel syndrome and other unaccepted conditions. In a June 11, 2021 development letter, OWCP advised her of the deficiencies of her expansion claim. It advised appellant of the type of evidence needed and afforded her 30 days to respond.

In response to OWCP’s development letter, appellant submitted a June 9, 2021 report wherein Dr. Dzugan noted that she had a positive median nerve compression test of the left hand and diagnosed left carpal tunnel syndrome. He indicated that recent EMG/NCV testing of the left upper extremity was consistent with carpal tunnel syndrome. Appellant also submitted a report detailing the findings of May 24, 2021 EMG/NCV testing, which contained an impression of mild left carpal tunnel syndrome.

By decision dated July 26, 2021, OWCP denied appellant’s expansion claim, finding that she had failed to meet her burden of proof to establish that she sustained left carpal tunnel syndrome, or any additional condition causally related to her accepted left shoulder employment injury.

Appellant subsequently submitted a July 21, 2021 report in which Dr. Dzugan indicated that she continued to report experiencing numbness, tingling, and pain in her left hand/arm “from her carpal tunnel syndrome.” Dr. Dzugan diagnosed left rotator cuff tendinitis and left carpal tunnel syndrome. He advised appellant that he believed her left shoulder pain was “also coming from her radiation of the pain from the carpal tunnel syndrome.”

Appellant stopped work on September 23, 2021. She filed CA-7 forms claiming disability from work for the period September 23 through November 5, 2021.

Appellant subsequently submitted an August 20, 2021 preoperative examination report in which Dr. Dzugan diagnosed left carpal tunnel syndrome. She also submitted August 26, September 3 and 24, 2021 reports wherein Dr. Dzugan indicated that she presented for follow-up care after undergoing left carpal tunnel release surgery on August 23, 2021. In September 3 and 24, 2021 reports, Dr. Dzugan advised that appellant reported she was “doing better” with respect to her left hand. In the September 24, 2021 report, he diagnosed left rotator cuff tendinitis and “left carpal tunnel release [one] month ago.”

In a November 2, 2021 work status form report, Dr. Dzugan indicated that appellant's shoulder had been injured. He advised that appellant could not return to work "until seen again."

In a November 16, 2021 development letter, OWCP notified appellant of the deficiencies of her claim for disability for the period September 23 through November 5, 2021. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In her November 20, 2021 responses to OWCP's questionnaire, appellant maintained that she did not sustain a new injury, but rather had been in pain since she first sustained injury due to her job duties in April 2018. She submitted an October 27, 2021 report of Dr. Dzugan who noted that she presented complaining of a burning sensation in the front portion of her left shoulder. Dr. Dzugan diagnosed left rotator cuff tendinitis. In an October 27, 2021 work status form report, he indicated that appellant's shoulder had been injured. Dr. Dzugan advised that appellant could not return to work "until seen again."

Appellant also submitted an unsigned November 5, 2021 administrative document, which provided medical appointment details, including a list of prescribed medications. The document listed, *inter alia*, a diagnosis of left carpal tunnel syndrome. Appellant also submitted unsigned November 11 and 21, 2021 progress notes, which contained a diagnosis of left shoulder rotator cuff tendinitis.

In a November 11, 2021 work status form report, Dr. Dzugan indicated that appellant could return to work on November 15, 2021. Appellant returned to full duty as a rural carrier on or about November 15, 2021.

By decision dated January 18, 2022, OWCP denied appellant's claim for disability for the period September 23 through November 5, 2021, finding that she failed to submit sufficient medical evidence in support thereof.

On February 1, 2022 appellant requested reconsideration of the January 18, 2022 decision.

In a February 18, 2022 report, Dr. Dzugan reported physical examination findings and indicated that he had a discussion with appellant regarding her left shoulder and neck pain symptoms. He indicated that she had spondylosis of the cervical spine with straightening of the cervical lordosis and anterior osteophytes at multiple levels. Dr. Dzugan diagnosed cervical spondylosis, and left rotator cuff tendinitis. In a March 11, 2022 report, he reported physical examination findings, and provided a diagnosis cervical spondylosis with radiculopathy and myelopathy. Appellant also submitted a May 7, 2021 grievance form.

On March 31, 2022 appellant stopped work.

By decision dated May 2, 2022, OWCP denied modification of its January 18, 2022 decision denying appellant claim for disability for the period September 23 through November 5, 2021. It also found that she failed to establish that OWCP should expand the acceptance of her claim to include any additional work-related conditions.

In an April 8, 2022 report, Dr. James M. Weaver, a Board-certified orthopedic surgeon, discussed appellant's factual and medical history, and reported the findings of his physical

examination. He diagnosed adhesions of the left shoulder joint, history of repair of the left rotator cuff, and left shoulder stiffness. Dr. Weaver noted that, with respect to the left shoulder, appellant had forward flexion to 95 degrees; painful extension to approximately 10 degrees (*versus* 30 degrees on the opposite shoulder); external rotation to approximately 25 to 30 degrees; internal rotation to approximately 70 degrees (slightly less than opposite shoulder); abduction to approximately 90 degrees; and adduction to approximately 20 degrees. He indicated that, utilizing Table 15-34 on page 475 of the sixth edition of the A.M.A., *Guides*, appellant had 3 percent impairment due to restricted forward flexion, 2 percent impairment due to restricted extension; 2 percent impairment due to restricted external rotation, 1 percent impairment due to restricted internal rotation, 3 percent impairment due to restricted abduction; and 1 percent impairment due to restricted adduction,⁴ which equaled 12 percent permanent impairment of the left upper extremity. Dr. Weaver found that appellant reached maximum medical improvement (MMI) on March 28, 2022.

In an April 28, 2022 report, Dr. Dzigan reported physical examination findings and diagnosed cervical spondylosis, cervical disc displacement, cervical radiculopathy, and myofascial pain.

In a May 26, 2022 report, Dr. Samuel F. Brown, an obstetrics and gynecology specialist, returned appellant to work in a light-duty capacity, restricting her from reaching above her head, bending, and lifting more than eight pounds without assistance. He advised that appellant required frequent sitting breaks.

On June 2, 2022 OWCP expanded the acceptance of appellant's claim to include strain of muscles and tendons of the rotator cuff of the left shoulder.

On June 6, 2022 appellant requested reconsideration of the May 2, 2022 decision.

On June 10, 2022 appellant filed CA-7 forms claiming disability from work for the period March 31 through June 3, 2022.⁵ In June 14 and 23, 2022 development letters, OWCP requested that she submit additional medical evidence in support of these disability claims.

By decision dated June 24, 2022, OWCP denied modification of its May 2, 2022 decision. On June 27, 2022 appellant requested reconsideration of the June 24, 2022 decision. She submitted a May 18, 2022 report of Dorothy Moore, a nurse practitioner, who diagnosed myofascial pain, cervical spondylosis, cervical radiculopathy, left arm weakness/pain, and left hand numbness/tingling. Appellant also submitted congressional inquiry letters with attached medical documents from mid-2019 through early-2021 which were previously of record, or which solely addressed left shoulder conditions already accepted by OWCP and periods of disability not currently under review.

By decision dated August 16, 2022, OWCP denied appellant's claim for disability from work for the period September 23 through November 5, 2021. By separate decision also dated

⁴ It is noted that Dr. Weaver listed two different impairment ratings for loss of abduction, and no impairment rating for loss of adduction.

⁵ On June 17, 2022 she filed CA-7 forms in which she again claimed disability from work for the period September 23 through November 5, 2021.

August 16, 2022, OWCP denied her claim for disability from work for the period March 31 through June 3, 2022.

In an August 18, 2022 letter, OWCP requested that Dr. Goodman, in his capacity as a DMA, clarify his October 23, 2020 report with respect to the question of whether appellant had greater than 11 percent permanent impairment of the left upper extremity. It requested that he comment on the April 8, 2022 impairment rating of Dr. Weaver. In an August 25, 2022 report, Dr. Goodman utilized Table 15-5 beginning on page 401 of the sixth edition of the A.M.A., *Guides* and applied the DBI rating method to determine that appellant had 10 percent permanent impairment of the left upper extremity. He determined that appellant's left shoulder AC joint injury fell under a CDX of a Class 1 impairment with a default value of 10 percent. Dr. Goodman assigned a GMFH of 1 due to appellant's mild problem; a GMPE of 0 due to inconsistent physical examination findings; and a GMCS of 2 due to MRI scan findings. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (0 - 1) + (2 - 1) = 0$, which resulted in no movement from the default value for a grade C or 10 percent permanent impairment of the left upper extremity. Dr. Goodman opined that it was not possible for him to apply the ROM rating method, noting that there was no documentation that Dr. Weaver took three measurements of each type of ROM. He therefore concluded that appellant's DBI rating of 10 percent permanent impairment of the left upper extremity represented the total extent of the permanent impairment of that extremity.⁶ Dr. Goodman noted that as appellant previously received a schedule award for 11 percent permanent impairment of the left upper extremity, she was not entitled to additional schedule award compensation.

By decision dated September 23, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a) regarding expansion and the claimed periods of disability from work.

By decision dated September 26, 2022, OWCP denied appellant's claim for an additional schedule award, as she did not meet her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁷ The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ The Board has held that when the

⁶ Dr. Goodman found that appellant reached MMI on April 8, 2022.

⁷ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.⁹ However, the normal progression of untreated disease cannot be stated to constitute “aggravation” of a condition merely because the performance of normal work duties reveals the underlying condition.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to the accepted left shoulder employment injury.

Appellant submitted a November 20, 2020 report wherein Dr. Dzukan diagnosed traumatic incomplete tear of the left rotator cuff. In a May 24, 2021 report, he diagnosed left carpal tunnel syndrome and ankylosis of the left shoulder. On June 9, July 21, and August 20, 2021 Dr. Dzukan also diagnosed left carpal tunnel syndrome. In August 26, September 3 and 24, 2021 reports, he indicated that appellant presented for follow-up care after undergoing left carpal tunnel release surgery on August 23, 2021. In a February 18, 2022 report, Dr. Dzukan diagnosed cervical spondylosis and traumatic incomplete tear of the left rotator cuff. In a March 11, 2022 report, he diagnosed cervical spondylosis with radiculopathy and myelopathy. In an April 28, 2022 report, Dr. Dzukan diagnosed cervical spondylosis, cervical disc displacement, cervical radiculopathy, and myofascial pain.

The Board finds, however, that this evidence would not establish appellant’s expansion claim because none of the reports contains an opinion that appellant sustained a medical condition, not presently accepted by OWCP, which was causally related to her accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition or disability is of no probative value on the issue of causal relationship.¹¹ Therefore, this evidence is insufficient to establish appellant’s expansion claim.

Appellant submitted an unsigned November 5, 2021 administrative document, which listed a diagnosis of left carpal tunnel syndrome, but the Board has held that unsigned reports cannot be considered probative medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.¹² She also submitted diagnostic testing reports, which contained impressions of some medical conditions not accepted by OWCP. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.¹³ The case record contains other reports dated between 2019 and 2022 of Drs. Field, Headley, Dzukan and other

⁹ *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

¹⁰ *Id.*

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *see S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

attending physicians, but these reports contained diagnoses of conditions, which have already been accepted by OWCP.

As the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to include additional medical conditions causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁴

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁶ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁷

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.¹⁸

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods September 23 through November 5, 2021, and March 31 through June 3, 2022 causally related to her accepted left shoulder employment injury.

¹⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁵ 20 C.F.R. § 10.5(f).

¹⁶ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁷ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁸ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁹ *T.W.*, Docket No. 22-0790 (issued March 9, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

Appellant submitted October 27 and November 2, 2021 work status form reports wherein Dr. Dzugan advised that she could not return to work “until seen again.” In a February 18, 2022 work status form report, he indicated that appellant could return to work with a restriction of lifting no more than 50 pounds. In a May 26, 2022 report, Dr. Brown returned appellant to work but restricted her from reaching above her head, bending, and lifting more than eight pounds without assistance. The Board finds, however, that this evidence would not establish appellant’s disability claim for the periods September 23 through November 5, 2021, and March 31 through June 3, 2022 because none of the reports contains an opinion that appellant had disability during these periods which was causally related to her accepted left shoulder employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition or disability is of no probative value on the issue of causal relationship.²⁰ Therefore, this evidence is insufficient to establish appellant’s disability claim.

As the medical evidence of record is insufficient to establish disability from work between her claimed periods of disability due to the accepted left shoulder employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the May 20, June 24, and August 16, 2022 merit decisions, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 3

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.²¹ 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.²² A request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.²³ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁴ If the request is timely, but fails to meet at least one of the requirements

²⁰ See *supra* note 11.

²¹ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

²² 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²³ 20 C.F.R. § 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.

²⁴ *Id.* at § 10.608(a); see *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁵

ANALYSIS -- ISSUE 3

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 June 27, 2022 appellant filed a timely request for reconsideration of a June 24, 2022 decision regarding expansion and the claimed periods of disability from work.²⁶ The Board finds, however, that she failed to establish that OWCP erroneously applied or interpreted a specific point of law; nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).²⁷

Appellant submitted a May 18, 2022 report of Ms. Moore, a nurse practitioner. However, as noted above, the Board has held that nurses, physician assistants, and physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.²⁸ As this report is of no probative value, it is not relevant to the underlying issues addressed in the June 24, 2022 decision from which appellant requested reconsideration, *i.e.*, her claim for expansion of the accepted conditions, and her claim for periods of work-related disability in 2021 and 2022. The Board has held that the submission of evidence or argument which does not address the particular underlying issue involved does not constitute a basis for reopening a case.²⁹

Appellant also submitted congressional inquiry letters with attached medical documents from mid-2019 through early-2021, which were previously of record or which solely addressed left shoulder conditions already accepted by OWCP and periods of disability not currently under review. The submission of this evidence would not require reopening of her case for merit review because this evidence is either repetitious or irrelevant to the underlying issues. The Board has held that 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.³⁰ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).³¹

²⁵ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁶ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²⁷ *See supra* note 23.

²⁸ *See supra* note 11.

²⁹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

³⁰ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

³¹ *See supra* note 22.

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.

LEGAL PRECEDENT -- ISSUE 4

The schedule award provisions of FECA,³² and its implementing regulations,³³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.³⁵ The sixth edition requires identifying the class for the CDX, which is then adjusted by grade modifiers GMFH, GMPE, and GMCS.³⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).³⁷

Regarding the application of ROM or DBI impairment methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

“As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).

“Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.* DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*” (Emphasis in the original.)

* * *

“If the rating physician provided an assessment using the DBI method and the [A.M.A.,] *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.

³² 5 U.S.C. § 8107.

³³ 20 C.F.R. § 10.404.

³⁴ *Id.*

³⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

³⁶ A.M.A., *Guides* 494-531.

³⁷ *Id.* at 521.

“If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.”³⁸

ANALYSIS -- ISSUE 4

The Board finds that this case is not in posture for decision with respect to whether appellant has met her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

On August 25, 2022 Dr. Goodman, the DMA, indicated that he had reviewed the April 8, 2022 report of Dr. Weaver, an attending physician, and determined that appellant had 10 percent permanent impairment of the left upper extremity as calculated under the DBI rating method. He found that Dr. Weaver did not provide adequate ROM findings to render a proper impairment rating under the ROM rating method, noting that there was no documentation that Dr. Weaver took three measurements of each type of ROM. Since appellant’s left shoulder condition allowed for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, Dr. Goodman, in his capacity as the DMA, was required to independently calculate her impairment using both the DBI and ROM methods and identify the higher rating for the claims examiner.³⁹

The Board notes that, although Dr. Goodman attempted to conduct a rating calculation under the ROM method, the case record does not contain recent ROM findings for properly conducting a left upper extremity permanent impairment rating under the ROM method.⁴⁰ As noted above, FECA Bulletin No. 17-06 provides detailed instructions for obtaining sufficient evidence to conduct a complete permanent impairment evaluation. However, such instructions were not fully carried out in this case, and therefore further development of the medical evidence is required in accordance with FECA Bulletin No. 17-06.⁴¹

This case shall therefore be remanded for full application of OWCP procedures found in FECA Bulletin No. 17-06 and the standards of the sixth edition of the A.M.A., *Guides*. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant’s permanent impairment.

³⁸ FECA Bulletin No. 17-06 (issued May 8, 2017).

³⁹ *See id.*

⁴⁰ Section 15.7 of the sixth edition of the A.M.A., *Guides* provides that ROM should be measured after a “wam up,” in which the individual moves the joint through its maximum ROM at least three times. The ROM examination is then performed by recording the active measurements from three separate ROM efforts and all measurements should fall within 10 degrees of the mean of these three measurements. The maximum observed measurement is used to determine the ROM impairment. A.M.A., *Guides* 464.

⁴¹ *See supra* note 39.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to the accepted left shoulder employment injury. The Board further finds that she has not met her burden of proof to establish disability from work for the periods September 23 through November 5, 2021, and March 31 through June 3, 2022, causally related to her accepted left shoulder employment injury. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). In addition, the Board finds that this case is not in posture for decision regarding whether appellant has met her burden of proof to establish greater than 11 percent permanent impairment of her left upper extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 2, June 24, August 16, and September 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed. The September 26, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 15, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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