

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

R.G., Appellant)	
)	
and)	Docket No. 25-0390
)	Issued: April 9, 2025
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, Edinburg, TX,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 14, 2025 appellant filed a timely appeal from an October 28, 2024 merit decision and a November 19, 2024 nonmerit decision of the Office of Workers' Compensation Programs (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 his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 19, 2024 decision, OWCP received additional evidence. 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.*

(2) 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 July 20, 2023 appellant, then a 52-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2023 he injured his left knee when he walked three miles during intermediate force instruction training while in the performance of duty.³ He did not stop work. OWCP accepted the claim for sprain of anterior cruciate ligament (ACL) and chondromalacia in the left knee and injury to the fascia and tendon of the left quadriceps muscle.

A magnetic resonance imaging (MRI) scan of the left lower extremity dated July 28, 2023 revealed a very small distal quadriceps partial intrasubstance tear without tendon transection or retraction, an ACL ligament sprain, a small joint effusion, and intermediate grade chondromalacia with thinning of the articular cartilage.

In a January 17, 2024 narrative medical report, Dr. Joel Solis, a Board-certified family medicine specialist, noted the history of the accepted employment injury and diagnosed ACL sprain and chondromalacia of the left knee and distal quadriceps tendon rupture. He indicated that appellant would benefit from therapies and medical treatments to "regain his functional capacity and way of life."

The record reflects that appellant underwent physical therapy to his left knee and accepted a light-duty administrative position with the employing establishment.

On July 8, 2024 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In an August 19, 2024 development letter, OWCP requested that appellant submit a medical report addressing whether he had reached maximum medical improvement (MMI) and providing a permanent impairment evaluation using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ No response was received.

By decision dated October 28, 2024, OWCP denied appellant's schedule award claim, finding that there was no medical evidence of record establishing permanent impairment of a scheduled member or function of the body.

On November 12, 2024 appellant requested reconsideration. No argument or evidence was submitted.

³ Appellant has two previously-accepted traumatic injury claims involving his left lower extremity, including an October 17, 2016 lumbar disc displacement and left lower extremity radiculopathy under OWCP File No. xxxxxx936, and a March 16, 2017 sprain and stress fracture of the left foot under OWCP File No. xxxxxx429. His claims have not been administratively combined by OWCP.

⁴ A.M.A., *Guides* (6th ed 2009).

By decision dated November 19, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment (DBI) method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.⁸ Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity, warranting a schedule award.

⁵ *Supra* note 1.

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a. (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *Supra* note 4 at page 3, section 1.3.

⁹ *Id.* at 493-556.

¹⁰ *Id.* at 521.

¹¹ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹² *See supra* note 7 at Chapter 2.808.6f (March 2017).

Appellant also submitted physical therapy reports and a left knee MRI scan. Certain health care providers, such as physical therapists, are not considered physicians under FECA¹³ and, therefore, their opinions on causal relationship do not constitute rationalized medical opinions and are of no probative value.¹⁴ Moreover, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.¹⁵ Thus, this evidence is insufficient to establish appellant's disability claim.

On July 8, 2024 appellant filed a Form CA-7 for a schedule award. OWCP, on August 19, 2024, requested that he submit a permanent impairment evaluation from his physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant, however, did not submit the requested medical evidence.

As noted above, appellant must submit an evaluation from a physician that supports a finding that he has reached MMI, and which includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁶

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met his burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹⁷ OWCP has discretionary authority in this regard and has imposed certain

¹³ Section 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁴ *See J.F.*, Docket No. 19-1694 (issued March 18, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

¹⁵ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹⁶ *See L.L.*, *supra* note 13; *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹⁷ 5 U.S.C. § 8128(a).

limitations in exercising its authority.¹⁸ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁹

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.²⁰ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²¹

ANALYSIS -- ISSUE 2

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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²²

Appellant also did not submit any relevant and pertinent new evidence with his November 12, 2024 request for reconsideration.²³ Therefore, he is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁴

¹⁸ 20 C.F.R. § 10.607.

¹⁹ *Id.* at § 10.607(a). 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 (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.

²⁰ *Id.* at § 10.606(b)(3); *see R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

²¹ *Id.* at § 10.608.

²² *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²³ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

²⁴ 20 C.F.R. § 10.606(b)(3); *C.C.*, Docket No. 22-1064 (issued February 14, 2023); *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *see F.H.*, Docket No. 20-0309 (issued January 26, 2021); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

The Board, therefore, 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.²⁵

CONCLUSION

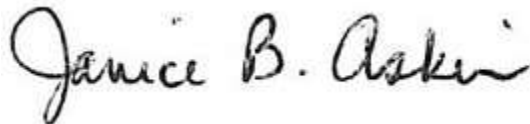
The Board finds that appellant has not met his burden of proof to establish permanent impairment of a schedule member or function of the body, warranting a schedule award. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 28 and November 19, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 9, 2025
Washington, DC

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



Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁵ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).