

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bryan, TX, Employer**

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**Docket No. 12-61  
Issued: May 25, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 5, 2011 appellant, through her attorney, timely appealed the September 2, 2011 nonmerit decision of the Office of Workers' Compensation Programs' (OWCP), which denied reconsideration of an April 7, 2010 schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board's jurisdiction extends only to the September 2, 2011 nonmerit decision.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> Because the latest merit decision was issued on April 7, 2010, more than 180 days prior to the filing of the instant appeal, the Board does not have jurisdiction over the merits of appellant's claim for a schedule award. The Board also notes that the current record includes evidence received after OWCP issued its September 2, 2011 decision. Because this evidence was not part of the record when OWCP issued its September 2, 2011 decision, the Board is precluded from considering it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

Appellant, a 57-year-old former mail processor, has accepted an occupational disease claim for a bilateral foot condition that arose on or about October 31, 2003.<sup>3</sup> The employing establishment relieved her of her duties effective February 9, 2009 and she subsequently filed a claim for wage-loss compensation, which OWCP denied.<sup>4</sup>

On March 31, 2009 appellant filed a claim for a schedule award (Form CA-7). In a report dated February 25, 2009, Dr. W. Paul Roquet, a Board-certified family practitioner, stated that she had activity-related corns and calluses involving the right foot that affected her gait and activity level. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), he found two percent whole person impairment for lower extremity loss of range of motion (ROM) due to mild inversion and eversion defects. Dr. Roquet found that appellant reached maximum medical improvement (MMI) as of February 25, 2009. In an April 9, 2009 addendum, he converted his previous whole person impairment rating to a four percent right leg rating under the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

OWCP later advised appellant that her physician should submit an impairment rating under the sixth edition of the A.M.A., *Guides* (2008).<sup>5</sup> In a report dated December 1, 2009, Dr. Roquet rated two percent right leg impairment based on a class 1, grade E soft tissue injury under Table 16-2, Foot & Ankle Regional Grid, A.M.A., *Guides* 501 (6<sup>th</sup> ed. 2008). On February 23, 2010 the medical adviser reviewed the record and concurred with Dr. Roquet's two percent rating.

By decision dated April 7, 2010, OWCP granted a schedule award for two percent impairment of the right leg. The award covered a period of 5.76 weeks from February 25 to April 6, 2009.

On July 15, 2011 appellant requested reconsideration.<sup>6</sup> She stated that she believed Dr. Roquet's impairment rating was extremely low because he did not include any of the findings from her podiatrist, Dr. Amy L. Haase. Appellant submitted treatment records from Dr. Haase dated April 7, May 19, June 23, August 4, October 13 and December 22, 2008 and

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<sup>3</sup> OWCP accepted the claim for scar conditions and fibrosis of the skin (ICD-9 709.2) and other congenital anomalies of the skin (ICD-9 757.39). Appellant also has an accepted claim for bilateral carpal tunnel syndrome, which arose on or about August 3, 1998, claim File No. xxxxxx075. On February 9, 2000 OWCP granted a schedule award for 13 percent impairment of the left upper extremity under claim File No. xxxxxx075.

<sup>4</sup> By decision dated October 28, 2009, OWCP found that the medical evidence did not establish that appellant was disabled from work on or after February 9, 2009 due to her accepted bilateral foot condition. It noted that the employing establishment terminated her employment effective February 9, 2009.

<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>6</sup> Appellant also submitted the appeal request form that accompanied the April 7, 2010 decision, which was signed and dated July 22, 2011.

March 2, May 18, June 8, July 20, October 5 and November 2, 2009 and March 8, 2010. She also submitted a June 16, 2008 report from Dr. Roquet, as well as his December 1, 2009 impairment rating and a copy of the medical adviser's February 23, 2010 report.

By decision dated September 2, 2011, OWCP denied appellant's request for reconsideration.<sup>7</sup>

### **LEGAL PRECEDENT**

OWCP has the discretion to reopen a case for review on the merits.<sup>8</sup> An application 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.<sup>9</sup> When an application 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.<sup>10</sup>

### **ANALYSIS**

Appellant's July 15, 2011 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Appellant's dissatisfaction with her own physician's impairment rating is not an argument that would warrant further merit review of her schedule award. Therefore, she is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).<sup>11</sup>

Appellant also failed to submit any "relevant and pertinent new evidence" with her July 15, 2011 request for reconsideration. Most of the evidence that accompanied her request was previously of record.<sup>12</sup> Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>13</sup> Although Dr. Haase's treatment records dated April 7, May 19, June 23, August 4, October 13 and December 22, 2008 and June 8, 2009 were new to the record, the treatment notes did not

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<sup>7</sup> Although appellant filed her July 15, 2011 request more than a year after the April 7, 2010 schedule award decision, OWCP did not apply the clear evidence of error standard under 20 C.F.R. § 10.607(b). Instead, OWCP applied the less stringent requirements for reconsideration set forth under 20 C.F.R. § 10.606(b) (formerly 20 C.F.R. § 10.138(b) (1998), as referenced in the September 2, 2011 decision at footnote 3).

<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> *Id.* at § 10.608(b).

<sup>11</sup> *Id.* at § 10.606(b)(2)(1) and (2).

<sup>12</sup> Several of Dr. Haase's treatment notes were verbatim copies of reports previously submitted by her colleague, Dr. Robert D. Leisten, DPM.

<sup>13</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

specifically address the extent of any lower extremity impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008), but merely chronicled appellant's ongoing complaints and the treatment she received.<sup>14</sup> Appellant did not provide any new medical evidence that might arguably impact the prior schedule award decision. Consequently, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).<sup>15</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's July 15, 2011 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> Dr. Haase's March 8, 2010 treatment note was also new to the record. However, it only noted that appellant missed that day's scheduled follow-up appointment.

<sup>15</sup> *Supra* note 11.