



On appeal his attorney asserts that OWCP erred in denying merit review because the attending physician's opinion was entitled to greater weight than an OWCP referral physician and that of an OWCP medical adviser and thus the medical evidence of record established that appellant is entitled to additional schedule awards.

### **FACTUAL HISTORY**

This case has previously been before the Board. In a September 1, 2005 decision, the Board affirmed OWCP's finding that appellant had 36 percent right leg impairment.<sup>3</sup> In an August 3, 2006 decision, the Board affirmed an OWCP finding that appellant had no more than seven percent impairment of the left arm. The case was not in posture for decision regarding impairment to appellant's right arm.<sup>4</sup> In a July 5, 2012 decision, the Board found that appellant had not established additional impairment to his upper extremities or his right lower extremity, and had not established entitlement to a schedule award for his left lower extremity. The Board affirmed an OWCP merit decision dated September 20, 2011.<sup>5</sup> By order dated October 25, 2012, the Board granted appellant's petition for reconsideration and reaffirmed the September 20, 2011 decision. The Board granted the petition as a March 9, 2010 report from Dr. Igor Stiler, an attending Board-certified neurologist, was not considered in the July 5, 2012 decision. The Board reviewed Dr. Stiler's report and determined that it was of diminished probative value because the physician did not refer to specific figures or tables in the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)<sup>6</sup> to explain how he rated permanent impairment.<sup>7</sup> The facts of the previous Board decisions and orders are incorporated herein by reference.

On February 28, 2013 appellant, through his attorney, requested reconsideration before OWCP. He referenced Dr. Stiler's March 9, 2010 report of record and a functional capacity evaluation dated February 4, 2010. Counsel asserted that, taken together, the reports provided sufficient detail so that a claims examiner could visualize the impairment with its resulting restrictions. He contended that appellant was entitled to increased schedule awards for the upper and lower extremities, consistent with Dr. Stiler's report. The attorney further asserted that Dr. Stiler as attending physician was in a better position to make judgments with respect to schedule awards. The June 14, 2010 report of Dr. David I. Rubinfeld, a Board-certified

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<sup>3</sup> Docket No. 05-787 (issued September 1, 2005). On December 11, 1991 appellant, a special delivery messenger, was injured when a cement step collapsed under him as he delivered mail. He stopped work, did not return and received compensation until he retired on October 31, 2002. Appellant elected retirement benefits under the Office of Personnel Management. The accepted conditions are multiple site contusions, lumbar and cervical radiculitis, concussion with cerebral vestibulopathy and depressive disorder. Under a separate claim for a July 12, 1976 injury, appellant had a work-related right ankle sprain and osteochondritis dessicans.

<sup>4</sup> Docket No. 06-421 (issued August 3, 2006). On November 18, 2005 appellant was granted a schedule award for 38 percent right upper extremity impairment and 7 percent left upper extremity impairment.

<sup>5</sup> Docket No. 12-377 (issued July 5, 2012).

<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>7</sup> Docket No. 12-377, *Order Granting Petition for Reconsideration and Reaffirming Case* (issued October 25, 2012).

orthopedic surgeon, who provided a second opinion evaluation for OWCP, and the report by an OWCP medical adviser should not serve as a basis to negate Dr. Stiler's findings.

The record also contains an August 19, 2012 report from Dr. Stiler that was not previously reviewed. Dr. Stiler noted appellant's complaints of radiating neck pain. He provided range of motion findings of the cervical and lumbar spine, and advised that strength tests were 5/5 in appellant's upper and lower extremities with the exception of right hand grip which was 4+/5. Sensory examination demonstrated no abnormalities. Dr. Stiler did not provide an impairment rating.

In a nonmerit decision dated June 3, 2013, OWCP denied appellant's reconsideration request. It found that counsel's arguments were similar to those previously considered by the Board and that the medical evidence submitted was not relevant.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>8</sup> Section 10.608(a) of Title 20 of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>9</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>10</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

### **ANALYSIS**

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated June 3, 2013 denying appellant's application for review. Therefore, there is no OWCP merit decision and the Board lacks jurisdiction to review the merits of appellant's claim.<sup>12</sup>

The Board finds that appellant's assertion that OWCP erroneously applied or interpreted the law is without merit. Appellant's attorney asserted, in his February 28, 2013 reconsideration

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<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.608(a).

<sup>10</sup> *Id.* at § 10.608(b)(1) and (2).

<sup>11</sup> *Id.* at § 10.608(b).

<sup>12</sup> *Supra* note 1.

request, that Dr. Stiler, as attending physician, was better able to make judgments with respect to permanent impairment. His March 9, 2010 report and a functional capacity evaluation dated February 4, 2010, when taken together, provided sufficient detail allowing reviewers to visualize the impairment and its resulting restrictions and establish additional impairment of appellant's upper and lower extremities consistent with Dr. Stiler's report.

On October 25, 2012 the Board reviewed Dr. Stiler's March 9, 2010 report in which the physician discussed the February 4, 2010 functional capacity evaluation.<sup>13</sup> The Board found Dr. Stiler's March 9, 2010 report to be of reduced probative value because the physician did not refer to the specific figures or tables in the A.M.A., *Guides* to explain his impairment ratings. As to the February 4, 2010 functional capacity evaluation itself, the Board reviewed this in the July 5, 2012 decision.<sup>14</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>15</sup> Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>16</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted a June 19, 2012 report by Dr. Stiler that had not previously been considered. Dr. Stiler, however, merely noted appellant's complaints and provided physical findings regarding cervical and lumbar range of motion, strength testing and a normal sensory examination. He did not provide an impairment rating. This report is not relevant to the issue of appellant's permanent impairment.<sup>17</sup>

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied his reconsideration request.

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

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>13</sup> *Supra* note 7.

<sup>14</sup> *Supra* note 5.

<sup>15</sup> *J.P.*, 58 ECAB 289 (2007).

<sup>16</sup> 20 C.F.R. § 10.606(b)(2).

<sup>17</sup> *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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