

denied her claim for a schedule award.¹ The Board found that appellant's physician, Dr. John B. Bieltz, an orthopedic surgeon, did not provide a rationalized medical opinion explaining how her lower extremity impairment was related to her accepted left plantar fasciitis condition. The Board also found that the Office properly denied appellant's request for an oral hearing and her request for reconsideration. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

On February 27 and April 2, 2008 the Office received letters dated October 12, 2007, February 25 and March 27, 2008 from appellant requesting reconsideration. In a September 12, 2007 report, Dr. Thomas F. Smith, a podiatrist, noted that appellant was evaluated on August 17, 2007 for protracted heel pain since an injury while standing at work in 2001. He noted that appellant could only stand for 20 minutes or walk for 200 yards without significant pain requiring rest. Dr. Smith diagnosed chronic plantar fasciitis with heel spur bilaterally and inferior calcaneal spurring by radiographs. He opined that maximum medical improvement had been reached and advised that appellant could not stand or walk for more than one hour throughout an eight-hour shift without rests and breaks. Under Table 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Dr. Smith opined that appellant had 10 percent lower extremity or 14 percent foot impairment for her chronic plantar fasciitis. A September 12, 2007 letter from Dr. Smith to appellant's attorney regarding payment was also received.

By decision dated April 18, 2008, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review of the case. It found that Dr. Smith's September 12, 2007 impairment rating was duplicative of Dr. Bieltz' November 21, 2005 impairment rating. Dr. Smith's September 12, 2007 letter to appellant's attorney was found irrelevant to the claim.

LEGAL PRECEDENT

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary

¹ Docket No. 07-1037 (issued September 12, 2007). The Office accepted that appellant suffered an exacerbation of left plantar fasciitis.

² 20 C.F.R. § 10.606(b)(2).

³ *Id.* at § 10.608(b).

value and does not constitute a basis for reopening a case.⁴ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

The Office denied merit review on the grounds that appellant did not raise a new legal argument or submit new and relevant medical evidence. In requesting reconsideration, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁶

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted evidence from Dr. Smith. The issue is whether such evidence is relevant and pertinent new evidence. The September 12, 2007 letter from Dr. Smith to appellant's attorney regarding payment is irrelevant to her schedule award claim; thus, further merit review was not required. However, the Board finds that Dr. Smith's September 12, 2007 impairment report is relevant new evidence as it offers additional medical opinion evidence on the issue of impairment based on appellant's accepted plantar fasciitis condition. The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specify that the evidence be relevant and pertinent and not previously considered by the Office.⁷ As Dr. Smith's report offers additional medical evidence on the impairment issue of appellant's accepted condition, this report is new and relevant and requires the Office to reopen his claim for further consideration of the merits.

CONCLUSION

The Board finds that appellant submitted relevant new evidence in support of her request for reconsideration, which warranted review of the merits of her claim by the Office. On remand, the Office should conduct a merit review of the evidence submitted with appellant's request for reconsideration and issue an appropriate decision.

⁴ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

⁵ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

⁶ *See supra* note 2.

⁷ *Donald T. Pippin*, 54 ECAB 631 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development in accordance with this decision of the Board.

Issued: January 6, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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