

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

OWCP accepted that appellant, then a 37-year-old carrier supervisor, sustained a displacement of thoracic or lumbar intervertebral disc without myelopathy on February 13, 1988. It paid all appropriate benefits, including a recurrence of March 25, 2003 and four back surgeries.

On September 7, 2005 appellant filed a claim for a schedule award. By decision dated February 27, 2007, OWCP awarded 14 percent permanent impairment of the left lower extremity. The award ran for 40.32 weeks for the period November 15, 2006 through August 24, 2007. On August 26, 2008 appellant appealed this decision to the Board. However, on March 19, 2009, the Board issued an order dismissing appeal as there was no final decision of OWCP properly within the Board's jurisdiction.⁴

By decision dated December 8, 2009, OWCP awarded one percent permanent impairment to the right lower extremity. No additional impairment was accorded to the left lower extremity. The award ran 2.88 weeks for the period December 15, 2008 to January 4, 2009.

In an undated letter received September 30, 2010, appellant requested reconsideration of OWCP's December 8, 2009 decision. He argued that the schedule award did not cover the length of his total disability which started on February 25, 2008 and that he experienced financial hardship because he had to repurchase his sick leave.

By decision dated October 7, 2010, OWCP denied further reconsideration of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.⁶ To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant also must file his or her application for review within one year

⁴ Docket No. 08-2347 (issued March 19, 2009).

⁵ Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁶ 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

of the date of that decision.⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The only decision before the Board is the October 7, 2010 nonmerit decision denying appellant's request for reconsideration of OWCP's December 8, 2009 schedule award decision. Appellant asserted on reconsideration that he should be paid a greater schedule award than that received as the schedule award did not cover the length of his total disability which started on February 25, 2008 and that he had to repurchase his sick leave. These contentions, however, do not establish that OWCP erroneously applied or interpreted a specific point of law or relevant legal argument not previously considered.

The underlying issue is whether appellant established greater impairment to his right and left lower extremities than that previously awarded. It is well settled that a claimant is not entitled to dual workers' compensation benefits for the same injury and may not receive compensation for temporary total disability and under a schedule award during the same period of time.⁹ The record reflects that appellant was paid wage-loss compensation for periods of disability from September 27 through December 14, 2008 and received schedule award compensation from December 15, 2008 through January 4, 2009. Appellant may file a claim for wage-loss compensation for periods of injury-related disability in addition to the schedule award. The record additionally reflects that he elected to repurchase his sick leave for the period April 2 through September 12, 2003. These contentions do not pertain to his schedule award claim and thus do not constitute a basis for merit review. Consequently, appellant was not entitled to a review of the merits of his case based on the first and second above noted requirements under 20 C.F.R. § 10.606(b)(2).

Appellant did not submit any new medical evidence pertaining to his schedule award. Thus, he was not entitled to a review of the merits of his case based on the third above noted requirement under 20 C.F.R. § 10.606(b)(2).

The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁷ *Id.* at § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

⁸ *Id.* at § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

⁹ *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Marie J. Born*, 27 ECAB 623, 628 (1976).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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