

FACTUAL HISTORY

On January 19, 2005 appellant, then a 49-year-old supervisory deputy, filed a traumatic injury claim alleging that on January 17, 2005 he injured his right knee when he stepped in a hole and fell on his right side while jogging. OWCP accepted the claim for right knee meniscus lateral cartilage tear, right lower leg osteoarthritis and displaced lumbar intervertebral disc.

On March 30, 2006 Dr. Patrick W. Mulroy, a treating Board-certified physiatrist, diagnosed disc protrusions at L3-4 and L5-S1 and myofascial restrictions. Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he concluded that appellant had a 10 percent right lower extremity impairment based on right hip internal rotation and flexion.

On July 25, 2006 appellant filed a claim for a schedule award.

On February 3, 2009 Dr. Ronald Blum, an OWCP medical adviser and Board-certified orthopedic surgeon, reviewed Dr. Mulroy's March 30, 2006 report and the statement of accepted facts. He agreed with the 10 percent right lower extremity impairment rating based on the fifth edition of the A.M.A., *Guides*.

On March 6, 2009 OWCP requested that Dr. Blum reevaluate his impairment finding as appellant has previously received a schedule award for a 10 percent impairment of his right lower extremity on March 7, 2002 under claim number xxxxxx192.

By letter dated March 16, 2009, OWCP informed appellant that claim numbers xxxxxx192, xxxxxx087, xxxxxx072 and xxxxxx417 had been combined with claim number xxxxxx192 as the master claim number.

On April 9, 2009 Dr. Blum concluded that appellant was entitled to an additional nine percent impairment of the right lower extremity using the fifth edition of the A.M.A., *Guides*.

By letter dated March 3, 2010, OWCP informed appellant that effective May 1, 2009 all schedule award determinations were based on the sixth edition of the A.M.A., *Guides* and requested that he provide a report from his treating physician using the sixth edition.

In a July 23, 2010 report, Dr. Sofia M. Weigel, a second opinion Board-certified physiatrist, noted that appellant had sustained multiple employment injuries and had four claims which were combined. Accepted conditions included right knee dislocation, bilateral knee lateral meniscus tear, bilateral lower leg osteoarthritis, lumbar disc nerve displacement and left knee sprain. Using the sixth edition of the A.M.A., *Guides*, she concluded that appellant had a zero percent right lower extremity impairment.

On September 30, 2010 Dr. Blum reviewed Dr. Weigel's report and concurred with her finding of a zero percent right lower extremity impairment based on the sixth edition of the A.M.A., *Guides*.

By decision dated November 3, 2010, OWCP denied appellant's claim for schedule award.

On September 12, 2011 OWCP received factual and medical evidence from appellant including an October 22, 2010 report from Dr. Frank J. Garcia, an attending Board-certified orthopedic surgeon and OWCP correspondence. Dr. Garcia noted appellant's medical and employment injury history. He opined that appellant was not able to perform his duties as a law enforcement official due to his injuries.

On October 26, 2011 appellant requested reconsideration of OWCP's denial of an additional schedule award. He noted his disagreement with Dr. Weigel's impairment findings and OWCP's failure to timely process his schedule award claim under the fifth edition of the A.M.A., *Guides*.

By nonmerit decision dated November 9 and December 5, 2011, OWCP denied reconsideration of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ 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.⁵

ANALYSIS

Appellant's October 26, 2011 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Appellant's dissatisfaction with Dr. Weigel's impairment rating and the use of the sixth edition of the A.M.A., *Guides* instead of the fifth edition, are not legal arguments that would warrant further merit review of his schedule award. Therefore, he is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).⁶

Appellant also failed to submit any relevant and pertinent new evidence with his October 26, 2011 request for reconsideration. Most of the evidence accompanying his request

² 5 U.S.C. §§ 8101-8193. 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.

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

⁴ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048, issued July 9, 2009; *Robert G. Burns*, 57 ECAB 657 (2006).

⁵ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440, issued March 16, 2009; *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *Id.* at § 10.606(b)(2)(1) and (2).

was previously of record. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁷ Although Dr. Garcia's October 22, 2010 report was new to the record, the report did not address the extent of any lower extremity impairment under the A.M.A., *Guides* (6th ed., 2009), but noted appellant's injury history and that appellant was disabled from performing his date-of-injury position as a result of his employment injuries.⁸ Appellant did not provide any new medical evidence that might arguably impact the prior schedule award decision in that the report was not relevant to the extent and degree of any employment-related impairment. His reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's case for further review of the merits of his case.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 5 and November 9, 2011 are affirmed.

Issued: October 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000) (evidence which does not address the particular issue involved does not constitute a basis for reopening a case for a merit review).