



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated October 2, 2012, the Board affirmed OWCP decisions dated November 9 and December 5, 2011 denying appellant's request for a merit review related to an additional schedule award. The Board found that OWCP properly denied his requests as appellant failed to submit any new medical evidence addressing the extent and degree of any employment-related impairment that might arguably impact his prior schedule award decision. The Board also found that appellant failed to advance a point of law not previously considered or show that OWCP erroneously applied or interpreted a point of law. The facts and circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.<sup>2</sup>

On October 26, 2012 appellant's counsel requested reconsideration and submitted a March 26, 2012 report from Dr. Timothy S. Palomera, an attending Board-certified family medicine practitioner, who diagnosed osteoarthritis which had worsened since he first evaluated appellant in January 2005. Dr. Palomera noted that a torn meniscus destabilizes the knee, changes the weight-bearing mechanics and was a significant contributing factor to premature knee osteoarthritis. He did not address permanent impairment.

By decision dated December 11, 2012, OWCP denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> When a claimant fails to meet one of the above standards, OWCP

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<sup>2</sup> 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 while jogging when he stepped in a hole and fell on his right side. OWCP accepted the claim for right knee meniscus lateral cartilage tear, right lower leg osteoarthritis and displaced lumbar intervertebral disc.

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

### ANALYSIS

Appellant's October 26, 2012 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance any legal argument not previously considered by OWCP. Therefore, appellant 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>7</sup>

Appellant also failed to submit any relevant and pertinent new evidence with his October 26, 2012 request for reconsideration. Although Dr. Palomera's March 26, 2012 report was new to the record, the report did not address the issue of the extent or degree of any lower extremity impairment under the A.M.A., *Guides* (6<sup>th</sup> ed.); but noted the impact of a torn meniscus on the development of knee osteoarthritis.<sup>8</sup> Appellant did not provide any new medical evidence that relevant to the prior schedule award decision.

As appellant failed to meet any of the criteria for a merit review, the Board finds that OWCP did not abuse its discretion in refusing to reopen his claim for a review on the merits.

### CONCLUSION

The Board finds that OWCP properly denied appellant's October 26, 2012 request for reconsideration.

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<sup>6</sup> 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>7</sup> *Id.* at § 10.606(b)(2)(1) and (2).

<sup>8</sup> *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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 11, 2012 is affirmed.

Issued: June 4, 2013  
Washington, DC

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

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

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