



## **FACTUAL HISTORY**

On October 13, 2005 appellant, then a 44-year-old mail handler, filed an occupational disease claim alleging that on April 6, 2005 she first became aware of bilateral foot and leg pain. She noted that it was not until October 6, 2005 that she realized the condition was employment related. OWCP accepted the claim for bilateral plantar fasciitis, which was expanded to include left ankle sprain, left ankle fracture and left distal fibular fracture.<sup>2</sup>

In correspondence dated September 29, 2012, appellant requested authorization to change her attending physician from Dr. Paul J. Papanek of Kaiser Permanente, a Board-certified occupational physician and Board-certified family practitioner, to Dr. I. Grant Orlin of Performance Medical and Rehabilitation Center, Inc.. She informed OWCP that Dr. Papanek had retired and was no longer practicing medicine.

By decision dated November 2, 2012, OWCP denied appellant's request to transfer medical treatment from Kaiser Permanente. It advised her to locate another physician at Kaiser Permanente in the Occupational Medicine department to be her treating physician.

On March 11, 2013 appellant requested reconsideration.

By decision dated March 19, 2013, OWCP denied reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.

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

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<sup>2</sup> By decision dated May 23, 2006, OWCP granted appellant a schedule award for a 15 percent permanent impairment of the left foot and a 6 percent permanent impairment of the right foot.

<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)(3). 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).

<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).

### ANALYSIS

On March 11, 2013 appellant requested reconsideration. However, she did not show that OWCP erroneously applied or interpreted a point of law or submit any relevant and pertinent new evidence or new relevant argument not previously considered by OWCP with her request. Because she did not meet any of the three criteria under 20 C.F.R. § 10.606(b)(3), appellant is not entitled to further review of the merits of her claim.<sup>7</sup> Thus, OWCP properly denied her March 11, 2013 request for reconsideration.

As the Board has no jurisdiction over the merits of appellant's claim, her contention on appeal is moot.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

### ORDER

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 19, 2013 is affirmed.

Issued: October 29, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> A.K., Docket No. 09-2032 (issued August 3, 2010); W.C., 59 ECAB 372 (2008); *Susan A. Filkins*, *supra* note 4.