

disability claim.¹ The Board found the medical evidence submitted by appellant insufficient to establish that her disability as of April 16, 2008 was causally related to her accepted right knee lateral collateral ligament strain. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.²

On August 3 and 9, 2012 appellant filed a claim for a schedule award.

By letter dated August 8, 2012, OWCP informed appellant that the evidence of record was insufficient to support a schedule award. It requested that she submit a medical report from her physician stating whether she had reached maximum medical improvement and providing an impairment rating. Appellant was given 30 days to provide the requested information. No evidence was received.

On September 14, 2012 Dr. H.P. Hogshead, an OWCP medical adviser, reviewed the medical evidence of record. He concluded that appellant had no permanent impairment. Dr. Hogshead noted that the most recent medical report of April 25, 2011 by Dr. Y. Susi Folse, a treating Board-certified physiatrist, provided no abnormal findings on physical examination.

By decision dated September 17, 2012, OWCP denied appellant's claim for a schedule award. The medical evidence failed to establish permanent impairment to a scheduled member.

On September 21, 2012 counsel requested a telephonic hearing before an OWCP hearing representative, which was held on January 10, 2013.

In a February 21, 2013 report, Dr. M. Stephen Wilson, an examining physician, concluded that appellant had a two percent impairment of the right leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He noted that she sustained an employment injury on March 21, 2007 when she fell at work on her right knee. Dr. Wilson reported that appellant had right knee and leg instability, weakness and pain. Appellant's right knee symptoms were also exacerbated by prolonged standing and repetitive movements. A physical examination of the right knee revealed a normal range of motion, tenderness on palpation over the lateral and medial joint lines, positive McMurray's test and moderate patellofemoral crepitation. Using Table 16-3, Dr. Wilson found a class 1 impairment or default impairment of two percent. He applied a grade modifier 1 for functional history under Table 16-6, page 516, a grade modifier 1 for physical examination findings under Table 16-7, page 517 and a grade modifier 1 for clinical studies using Table 16-8, page 519. Dr. Wilson found the total right knee impairment was two percent.

By decision dated March 27, 2013, OWCP's hearing representative affirmed the September 17, 2012 denial of appellant's schedule award claim. She found that Dr. Wilson's report was insufficient to permanent impairment due to the accepted employment injury as it was based on an inaccurate medical and factual history.

¹ Docket No. 09-2338 (issued August 12, 2010).

² On March 21, 2007 appellant, then a 45-year-old receiving/dispatch clerk, filed a traumatic injury claim alleging that on that date she injured her right knee when she stepped out of a traveling trailer. OWCP accepted the claim for right knee collateral ligament strain.

On April 2, 2013 counsel requested reconsideration. In support of her request, appellant resubmitted the February 21, 2013 impairment rating by Dr. Wilson.

By decision dated April 26, 2013, OWCP denied reconsideration without further merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for right knee collateral ligament strain. Appellant filed a claim for a schedule award which it denied on September 17, 2012. OWCP's hearing representative affirmed the denial in a March 27, 2013 decision. The issue is whether appellant has established permanent impairment of her legs. The Board finds that she has failed to meet her burden of proof.

The only evidence appellant submitted supporting her claim for a schedule award is the February 21, 2013 report from Dr. Wilson. However, the report is based on an inaccurate history of the employment injury. While Dr. Wilson correctly noted an injury date of March 21, 2007, his description of how the injury occurred is inaccurate. He stated that the injury occurred when appellant fell on March 21, 2007. However, a review of the record shows that the injury was sustained when she heard her knee popping while stepping out of a trailer. Appellant did not attribute her right knee injury to a fall. The Board has held that medical reports based on an inaccurate factual history are entitled to diminished probative value.⁷ Thus, Dr. Wilson's report is insufficient to support appellant's claim for a schedule award.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005).

The record also contains a September 14, 2012 report by Dr. Hogshead, who concluded that appellant had no permanent impairment of her legs. Dr. Hogshead noted the lack of any abnormal physical examination findings by appellant's treating physician in an April 25, 2001 report.

The Board finds that the record provides no probative medical evidence to establish any permanent impairment causally related to appellant's accepted right knee collateral ligament strain. Appellant has not met her burden to submit medical evidence supporting that she sustained a permanent impairment of a scheduled member of the body due to her accepted work injury.⁸ She has not met her burden of proof.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁹ 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.¹⁰ 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 of the date of that decision.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

Counsel requested reconsideration by letter dated April 2, 2013 and resubmitted the February 21, 2013 report from Dr. Wilson in support of appellant's request. The issue on appeal is whether appellant's April 2, 2013 request for reconsideration met any of the conditions under 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits.

Appellant did not submit any pertinent new or relevant evidence in support of her April 2, 2013 reconsideration request. She did not show that OWCP erroneously applied or interpreted a

⁸ *Annette M. Dent*, 44 ECAB 403 (1993).

⁹ 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.

¹⁰ 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).

¹¹ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

specific point of law. The only evidence provided by appellant with her request was a copy of the February 21, 2013 report by Dr. Wilson, which was previously of record and considered by OWCP's hearing representative in a March 27, 2013 decision. The Board finds that she has not established a basis for reopening her case for further merit review. The evidence submitted repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening appellant's case.¹³

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her April 2, 2013 request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that she sustained a permanent impairment of her right lower extremity causally related to the accepted March 21, 2007 employment injury. The Board further finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 26 and March 27, 2013 are affirmed.

Issued: January 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹³ See *F.R.*, 58 ECAB 607 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).