United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
and	)	**Docket No. 13-2147**
	)	**Issued: March 18, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Baton Rouge, LA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 25, 2013 appellant filed a timely appeal from a March 26, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from the last merit decision dated March 16, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.[2]

ISSUE

The issue is whether the OWCP properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

Appellant, a 34-year-old mail carrier, filed a Form CA-2 claim on March 6, 2000 alleging that she developed a bilateral foot condition causally related to employment factors. OWCP accepted the claim for bilateral joint derangement, bilateral calcaneal spur, bilateral bunion; and bilateral plantar fibromatosis and began payment for temporary total disability compensation.

A conflict in the medical evidence developed over whether appellant could return to her job as a mail carrier. To resolve this conflict, OWCP referred her to Dr. Gordon P. Nutik, Board-certified in orthopedic surgery and an impartial medical examiner. In a report dated March 17, 2010, he noted complaints of bilateral foot pain and stated that x-rays of appellant's feet were essentially normal. Dr. Nutik advised that she had experienced progressive pain in both feet since 1996. He stated that appellant had continuing complaints which included bilateral plantar fasciitis; she underwent a right-sided bunionectomy in 2009 and had residual subjective complaints at the scar, although she did not appear to have any significant left-sided bunion disease. Dr. Nutik diagnosed marked flat feet and bilateral accessory naviculars which were also prone to be symptomatic. He opined that due to her chronic bilateral foot complaints she could not return to her old job of delivering mail. Dr. Nutik asserted that appellant could return to an eight-hour job with accommodations made to restrict any climbing and to allow her to sit during the workday. He indicated that she had a chronic problem and recommended orthotics and a home program of exercises to maintain range of motion of her feet. OWCP also received a March 17, 2010 work restriction evaluation from Dr. Nutik in which he recommended sedentary work and outlined work restrictions including no walking or standing.

Dr. Nutik completed an April 29, 2010 work restriction evaluation in which he included work restrictions for appellant, including no walking and no standing for more than one hour. He indicated that she could perform work as long as she was off her feet.

By decision dated March 25, 2011, OWCP advised appellant that it was reducing her compensation because the weight of the medical evidence showed that she was no longer totally disabled for work because of her accepted bilateral foot conditions and that the evidence of record showed that the position of receptionist represented her wage-earning capacity.

On January 23, 2012 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her feet.

By letter dated January 30, 2012, OWCP informed appellant that it required additional medical evidence in support of her schedule award claim. It asked her to provide a report containing: (a) a diagnosis upon which the impairment was based, including any related surgery, and a detailed description of all pertinent objective findings and subjective complaints; (b) a detailed description of any permanent impairment of the same member or function which preexisted the injury; and (c) a final rating of the permanent impairment, with a discussion of the rationale for the calculation based on the applicable criteria and/or tables in the pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). OWCP requested that appellant submit the additional evidence within 30 days. Appellant did not submit any medical evidence in support of her schedule award claim.

By decision dated March 16, 2012, OWCP found that appellant had no ratable impairment causally related to her accepted bilateral foot conditions and therefore was not entitled to a schedule award.

In an October 1, 2012 report, Dr. Qui T. Le, a specialist in podiatry and appellant's treating physician, noted that he was treating appellant for bilateral ankle instability, bone spurs and plantar fasciitis. He advised that appellant was also experiencing bilateral joint derangement, bilateral calcaneal spurs and bilateral plantar fibromatosis. Dr. Le indicated that he had prescribed home exercises and orthotics. He opined that the effects of appellant's work injury continued, that her condition was not improving and that she was unable to perform work of any kind.

On March 5, 2013 appellant requested reconsideration.

In a March 5, 2013 letter, appellant advised OWCP that she was experiencing difficulty obtaining a physician who performed impairment evaluations. She asked OWCP if it could refer her to a physician who could perform an impairment evaluation in the event the current medical evidence was not sufficient to establish that she had an impairment in her feet causally related to her accepted conditions. In support of her request for reconsideration, appellant submitted: July 2, 2012 letters from the Office of Personnel Management (OPM) indicating that she had been approved for disability retirement due to chronic pain from her ankles and feet; a copy of Dr. Nutik's March 17, 2010 work capacity evaluation form report; a February 25, 2013 letter from appellant in which she requested a copy of her case file; and a March 19, 2013 letter from OWCP which discussed election of benefits between OWCP and OPM.

By decision dated March 26, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4]

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. She submitted letters regarding her election of benefits. This evidence,

[3] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[4] *Howard A. Williams*, 45 ECAB 853 (1994).

however, is not pertinent to the issue on appeal; *i.e.*, whether appellant had any permanent impairment stemming from her accepted bilateral foot conditions. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[5] OWCP asked appellant to submit a report from a physician which contained an impairment evaluation indicating that she had permanent impairment from her accepted bilateral foot conditions; none of the documents she submitted contained such a report.

The only new medical evidence appellant submitted in support of her request for reconsideration, which had not been previously reviewed by OWCP, was Dr. Le's October 1, 2012 report. While Dr. Le noted appellant's diagnoses in his October 1, 2012 report, he did not offer an opinion regarding the issues in this case, nor the degree of permanent impairment and the date of appellant's maximum medical improvement. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[6]

Appellant also resubmitted Dr. Nutik's March 17, 2010 report. Dr. Nutik's March 17, 2010 work restriction evaluation stated appellant's restrictions as of that date, but did not evaluate the degree of her permanent impairment. As his March 17, 2010 work restriction evaluation had already been reviewed by OWCP, the resubmission was duplicative.[7]

Appellant alleged on reconsideration and on appeal that she cannot find a physician who will perform impairment evaluations. The Board has held however that it remain appellant's burden of proof to establish that she sustained permanent impairment.[8]

The March 5, 2013 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 in its March 26, 2013 decision.

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.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

[5] *See David J. McDonald*, 50 ECAB 185 (1998).

[6] *See Vanessa Young*, 55 ECAB 575 (2004).

[7] *See F.R.*, 58 ECAB 607 (2007).

[8] *See D.W.*, Docket No. 13-1387 (issued January 6, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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