

FACTUAL HISTORY

On June 27, 2003 appellant, then a 53-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that he sustained multiple injuries on June 14, 2003 when a pickup truck hit his postal vehicle. OWCP accepted the claim for closed C5-C7 fracture with unspecified spinal cord injury, left olecranon bursitis, sprain of left knee cruciate ligament, thoracic or lumbosacral neuritis or radiculitis tear of lateral meniscus of left knee, sprain of right interphalangeal wrist and lumbosacral spondylosis without myelopathy.

On March 16, 2010 appellant filed a claim for a schedule award (Form CA-7).

By decision dated December 15, 2010, OWCP granted appellant a schedule award claim for five percent permanent impairment of the right thumb and seven percent permanent impairment of the left leg.

On January 11, 2011 appellant requested an oral hearing before the Branch of Hearings and Review.

At the April 7, 2011 hearing, appellant testified that he believed he was entitled to a greater award. In support of his claim, he submitted a May 5, 2011 report from Dr. James A. Stuckmeyer, a Board-certified orthopedic surgeon, which provided an impairment rating of the right upper and left upper extremities.

By decision dated June 21, 2011, the Branch of Hearings and Review vacated the December 15, 2010 schedule award determination and instructed OWCP to remand the case to a district medical adviser (DMA) for an opinion on whether appellant sustained a permanent impairment as a result of his accepted employment-related injuries.

On remand, OWCP routed the case file and Dr. Stuckmeyer's report to an OWCP medical adviser.

In an August 3 and 28, 2011 report, the DMA reported that appellant was entitled to the previously processed 7 percent permanent impairment of the left lower extremity, as well as an additional 19 percent permanent impairment of the left lower extremity, for a total of 26 percent. He reported that the right thumb impairment must be rescinded.

By decision dated September 13, 2011, OWCP granted appellant an additional 19 percent impairment of the left lower extremity.

On April 17, 2012 appellant requested reconsideration of the September 13, 2011 schedule award determination.

In support of his claim for an increased schedule award, appellant submitted a February 20, 2012 independent medical evaluation from Dr. Ronald Zipper, a Doctor of Osteopathic Medicine. Based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² Dr. Zipper opined that appellant

² A.M.A., *Guides* (2009).

sustained 57 percent whole person impairment as a result of his June 14, 2004 injury and provided an impairment rating:

“Combined ratings of the right upper extremity = 38 [percent] RUE, or 23 [percent] WPI; Combined ratings of the left upper extremity = 38 [percent] LUE, or 23 [percent] WPI; Combined ratings of the right lower extremity = 20 [percent] RLE, or 8 [percent] WPI; Combined ratings of the left lower extremity 27 [percent] LLE, or 11 [percent] WPI; Combined values of all WPI ratings, using the Combined Values Chart =57 [percent].

In a May 5, 2012 report, the DMA reviewed Dr. Zipper’s February 20, 2012 report to determine permanent partial impairment of the left lower extremity. He reported that Dr. Zipper did not indicate which edition of the A.M.A., *Guides* was used nor did he identify the tables, chapters or grade modifiers used to determine his ratings.

By decision dated May 31, 2012, OWCP denied modification of appellant’s schedule award claim finding that Dr. Zipper’s report did not contain sufficient information to warrant additional permanent impairment.

On July 13, 2012 appellant requested reconsideration of the May 31, 2012 OWCP decision and submitted a supplemental report from Dr. Zipper in support of her claim.

In the July 2, 2012 addendum report, Dr. Zipper reported that the DMA did not accurately review his previous report as he had indicated using the sixth edition of the A.M.A., *Guides*. He stated that the left knee torn posterior cruciate ligament was equivalent to Table 16-2, class 1 with grade modifiers on Table 16-5, Table 16-6 and Table 16-7 which rendered the net adjustment formula to be grade E for a 13 percent permanent impairment of the left lower extremity. The lumbar radiculopathy with the residual effect on peripheral nerves, in particular the sciatic nerve, was based on Table 16-2 which rendered class 1 with a net adjustment formula of 13 percent left lower extremity impairment. Dr. Zipper concluded that the combined values equaled 27 percent permanent impairment of the left lower extremity.³

On December 10, 2012 the DMA reviewed Dr. Zipper’s supplemental report and determined that he failed to accurately and correctly reflect his findings, improperly referenced use of specific tables, lacked discussion of how grade modifiers were used and did not correctly process the left lower impairment ratings. He further noted that the ratings offered for the sciatic nerve of the left knee could not be added. The DMA went on to state that, even if the sciatic nerve and left knee could be added, the result would not be greater than 26 percent.

By decision dated January 3, 2013, OWCP affirmed the May 31, 2012 decision finding that appellant was not entitled to an increased schedule award for the left lower extremity. It noted that the DMA reviewed Dr. Zipper’s supplemental report and found that his findings were not correctly applied to support an increase in impairment of the left leg.

³ The Board notes that the combined values total 26 percent permanent impairment of the left lower extremity, not 27 percent as stated by Dr. Zipper.

On May 14, 2013 appellant requested reconsideration of OWCP's decision. He argued that the DMA was incorrect and Dr. Zipper's reports established a 27 percent permanent impairment of the left lower extremity. Appellant further argued that the medical evidence submitted established permanent impairment to various other body parts for which he should receive schedule awards.

In support of his claim, appellant resubmitted Dr. Zipper's February 20, 2012 report and also submitted a new report from him dated April 26, 2013.

In his April 26, 2013 report, Dr. Zipper stated that OWCP requested his calculations regarding the left lower extremity only for which he found 27 percent permanent impairment. He repeated the impairment ratings provided in his initial February 20, 2012 report and reiterated that the DMA paid little attention to his report.

By decision dated October 30, 2013, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by 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.⁴ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Board finds that OWCP properly denied reopening appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his May 14, 2013 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's argument was that Dr. Zipper's report was sufficient to establish a 27 percent permanent impairment of the left lower extremity. Further the DMA's findings were incorrect. His simple assertion disagreeing with the DMA's rating does not warrant merit review of the claim. The Board notes that the underlying issue in this case is whether appellant has greater than 26 percent impairment of the left lower extremity for which he received schedule

⁴ *D.K.*, 59 ECAB 141 (2007).

⁵ *K.H.*, 59 ECAB 495 (2008).

awards. That is a medical issue which must be addressed with relevant medical evidence.⁶ Appellant failed to submit new and relevant medical evidence in support of his claim.⁷

Accompanying his May 14, 2013 reconsideration request, appellant resubmitted Dr. Zipper's February 20, 2012 medical report which was previously addressed and evaluated by OWCP in its May 31, 2012 and January 3, 2013 merit decisions. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence.

Appellant also submitted a new medical report dated April 26, 2013 from Dr. Zipper. While Dr. Zipper's April 26, 2013 report is new, his report is essentially identical and repetitive of his February 20, 2012 and July 2, 2012 reports which were previously considered by OWCP. It is insufficient to reopen the case for review of the merits of appellant's claim.⁸ Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.⁹ A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, appellant failed to submit any new and relevant evidence addressing whether he was entitled to an increased schedule award claim for the left lower extremity.

The Board notes that, on appeal, appellant argued that the medical reports submitted established permanent impairment to other members of the body. OWCP's decision on appeal before the Board addressed permanent impairment of the left lower extremity. There is no other final decision for permanent impairment in the record. The Board therefore lacks jurisdiction to address any other issue.¹⁰

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

⁸ 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. *Eugene F. Butler*, 36 ECAB 393 (1984).

⁹ See *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

¹⁰ 20 C.F.R. § 501.2(c); see *E.L.*, 59 ECAB 405 (2008); *Linda Beale*, 57 ECAB 429 (2006) (the Board's jurisdiction extends only to the review of final decisions by OWCP).

¹¹ *Sherry A. Hunt*, 49 ECAB 467 (1998).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 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