

his burden of proof to establish entitlement to a schedule award for permanent impairment.² The law and facts of the previous Board decision are incorporated herein by reference.

In a January 6, 2014 letter, received by OWCP January 28, 2014, appellant requested reconsideration. He asserted that the reports of Dr. Gerard M. Gerling, a Board-certified neurologist and second opinion examiner, were insufficient to carry the weight of the medical evidence as he was unaware of several conditions appellant had suffered in the January 22, 1998 work-related accident and had mixed up appellant's diagnoses. Appellant also asserted that Dr. Gerling failed to report important examination findings and diagnoses as well as electromyography reports.

In support of his reconsideration request, appellant submitted additional evidence. OWCP received follow-up reports from Dr. Omar Quiles, a Board-certified physiatrist, dated October 31, 2013, and Dr. Padmaja R. Yatham, an anesthesiologist, dated June 6, July 18, August 15, October 3 and December 5, 2013 and January 16, 2014, which provided impressions of cervicgia, cervical degenerative disc disease, cervical facet joint arthritis and cervical radiculitis. In the July 18, 2013 report, Dr. Yatham noted that appellant had a work-related injury and "all the cervical pain was related to the work injury and his magnetic resonance imaging (MRI) scan showed cervical disc herniation after the work [injury] in 2009 and appellant states he has spondylosis and spinal stenosis." He noted that OWCP approved facet joint injections in the past, but was no longer approving them.

By decision dated February 5, 2014, OWCP denied reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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 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.⁵ When a claimant fails to

² Docket No. 13-1323 (issued December 11, 2013). On January 22, 1998 appellant, then a 54-year-old postal worker, was involved in a work-related automobile accident while stopped at a traffic light. OWCP accepted his claim for a neck strain and sprains of the shoulder and upper arm, acromioclavicular, bilateral. Appellant did not stop work but was prescribed work restrictions for light-duty work effective January 23, 1998. Appellant's concurrent or preexisting conditions include cervical degenerative disc disease, lumbar herniated disc, right ankle arthroscopy with synovectomy in 2003; history of right foot fifth metatarsal fracture; and a history of high blood pressure, asthma and diabetes. He was also involved in a nonemployment-related automobile accident on August 9, 1998.

³ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The underlying issue on reconsideration is whether appellant has submitted sufficient evidence relevant to the issue of whether he sustained any permanent impairment as a result of his January 22, 1998 work injury warranting a schedule award. Appellant's January 6, 2014 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. While he contended that the reports of Dr. Gerling, a Board-certified neurologist and second opinion examiner, were insufficient to carry the weight of the medical evidence, appellant had previously raised this argument and the Board affirmed in its December 11, 2013 decision that OWCP properly relied upon the reports of Dr. Gerling to deny appellant's schedule award claim. The Board specifically found that Dr. Gerling reviewed the medical evidence and statement of accepted facts and provided examination findings and reasoning for his conclusion that appellant's accepted conditions had resolved. Appellant has not raised any new arguments which were not previously addressed. Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

The Board also finds that appellant did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits. The October 31, 2013 medical report from Dr. Quiles and the June 6, July 18, August 15, October 3 and December 5, 2013 and January 16, 2014 reports from Dr. Yatham provide impressions of cervicalgia, cervical degenerative disc disease, cervical facet joint arthritis and cervical radiculitis. These reports, while new to the claim, are not relevant to the issue of whether appellant sustained permanent impairment as a result of his work injury. None of the reports provided a well-rationalized opinion as to how his current conditions caused any impairment related to the accepted work injury. It is appellant's burden to prove that the condition for which a schedule award is sought is causally related to his employment.⁷ He must establish that impairment to a scheduled member was caused by the accepted injury before impairment can be assessed.⁸ Thus, these medical reports are insufficient to reopen appellant's claim for further merit review.⁹

The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant did not

⁶ *Id.* at § 10.608(b).

⁷ *Veronica Williams*, 56 ECAB 367 (2005).

⁸ *See generally Thomas P. Lavin*, 57 ECAB 353 (2006).

⁹ OWCP properly noted that appellant's file remained open for medical treatment of the accepted diagnoses for right shoulder strain, cervical strain and thoracic strain and that the new evidence relates to his current medical treatment.

meet any of the regulatory requirements and OWCP properly declined to reopen his claim for further merit review.¹⁰

On appeal, appellant reiterates his contention that Dr. Gerling's reports were insufficient to carry the weight of the medical evidence. As noted, this argument was previously raised and addressed.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁰ *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (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).