

FACTUAL HISTORY

On April 23, 2009 appellant, then a 62-year-old custodian, filed a traumatic injury claim alleging that on that date he injured his ankle when the door hit it. OWCP accepted the claim for left Achilles tendinitis and left ankle contusion. It accepted appellant's August 10, 2009 and February 9, 2010 claims for a recurrence of disability.

On January 16, 2013 appellant filed a claim for a schedule award.

By letter dated January 23, 2013, OWCP informed appellant as to the requirements for establishing a schedule award.

On March 18, 2013 OWCP received an undated permanent impairment worksheet which referenced attached notes. No notes accompanied the worksheet.

On March 29, 2013 OWCP received a January 16, 2013 report from Dr. Eric P. Keefer, a treating Board-certified orthopedic surgeon, who diagnosed Achilles bursitis or tendinitis and chronic left Achilles and plantar fascial pain. Dr. Keefer stated that appellant had reached maximum medical improvement and had a 30 percent permanent impairment of his left foot and ankle based on the compensation guidelines. In reaching this impairment rating, he noted that the default impairment for Achilles tendon tearing and inflammation, mild-to-moderate plantar flexion and dorsiflexion defects was 20 to 25 percent. Dr. Keefer determined that appellant had a 15 percent impairment based on the fact that he did not have full Achilles tendon tear and a 15 percent impairment for range of motion deficits from plantar fasciitis. A physical examination of the left ankle revealed no swelling, mildly reduced strength and range of motion and tenderness of the plantar fascial and Achilles tendon. Dr. Keefer also reported decreased tenderness and swelling of cuboid bone with mild-to-moderate loss of motion of dorsal and plantar flexion in the ankle joint.

By decision dated April 1, 2013, OWCP denied appellant's claim for a schedule award finding that the medical evidence was insufficient to show that he sustained an impairment to a scheduled member or function as a result of his accepted employment injury. It noted that he did not submit an impairment rating from his treating physician.

In an appeal form request dated May 9, 2013, appellant requested reconsideration.

By decision dated May 21, 2013, OWCP denied reconsideration.

In a letter dated October 2, 2013, appellant's counsel requested reconsideration and referenced an enclosed medical report.²

By decision dated October 11, 2013, OWCP denied reconsideration.

² No medical report was attached to counsel's letter, based on a review of the record.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.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 meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

OWCP accepted appellant's claim for left Achilles tendinitis and left ankle contusion. Appellant filed a claim for a schedule award. By decision dated April 1, 2013, OWCP denied his schedule award claim. Appellant requested reconsideration of this decision on May 9, 2013. The issue presented on appeal is whether he met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered by OWCP. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any evidence in support of his request.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal counsel argues that the medical evidence establishes that appellant has a 30 percent permanent impairment of the left foot and ankle. The only decision over which the Board has jurisdiction is the October 11, 2013 nonmerit decision which is discussed in the jurisdictional statement. As discussed above, appellant failed to meet any of the requirements of section 10.606(b)(3) as he presented no pertinent new and relevant evidence, advanced no new

³ 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.

⁴ 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).

⁵ *Id.* at § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁶ *Id.* at § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

legal argument, nor showed that OWCP erroneously applied or interpreted a specific point of law with his reconsideration request.⁷

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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 11, 2013 is affirmed.

Issued: October 6, 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

⁷ The Board notes that there is nothing in the record to suggest that OWCP reviewed the January 16, 2013 report from Dr. Keefer. 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.