



## **FACTUAL HISTORY**

This case has a lengthy appellate history before the Board. In the first appeal, the Board issued a decision on October 1, 1999 which set aside a September 24, 1997 OWCP decision. The Board found that appellant had submitted medical evidence regarding permanent impairment at a date subsequent to the prior schedule award decision and remanded the case to OWCP for further review.<sup>2</sup> Therefore, on March 1, 2001 the Board affirmed a November 16, 1999 OWCP decision that appellant had not established permanent impairment to any of her extremities.<sup>3</sup> By decision dated September 17, 2003, the Board affirmed OWCP decisions dated October 24, 2002, January 16 and March 7, 2003, which found that appellant had no more than a 25 percent permanent impairment of her right lower extremity and a 5 percent permanent impairment of the left lower extremity.<sup>4</sup>

By decision dated July 16, 2004, the Board found that OWCP had failed to consider the merits of appellant's request for an increased schedule award and set aside a January 30, 2004 OWCP decision.<sup>5</sup> The Board, by decision dated June 1, 2005, affirmed OWCP decisions dated October 6 and 14, 2004,<sup>6</sup> finding no more than six percent left lower extremity impairment. On December 1, 2011 the Board issued a decision setting aside a July 23, 2010 schedule award decision and remanded the case for further development of the medical opinion evidence.<sup>7</sup> The Board found that the evidence of record did not contain a sufficiently reasoned medical opinion regarding the degree of impairment for appellant's left lower extremity using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On November 22, 2013 the Board affirmed decisions dated November 19, 2012 and March 18, 2013. The Board found that appellant failed to establish clear evidence of error with respect to her request for review of an October 2, 2009 decision concerning the denial of a recurrence claim. In affirming the March 18, 2013 decision, the Board found that appellant had not met her burden of proof to establish that she had more than a six percent impairment of her left lower extremity. The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporate herein by reference.<sup>8</sup>

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<sup>2</sup> 51 ECAB 115 (1999).

<sup>3</sup> Docket No. 00-845 (issued March 1, 2001).

<sup>4</sup> Docket Nos. 03-1068 and 03-1342 (issued September 17, 2003). OWCP issued a schedule award for a 25 percent right leg permanent impairment on January 16, 2003 and a 5 percent left leg permanent impairment on March 7, 2003.

<sup>5</sup> Docket No. 04-919 (issued July 16, 2004).

<sup>6</sup> Docket No. 05-354 (issued June 1, 2005).

<sup>7</sup> Docket No. 11-517 (issued December 1, 2011).

<sup>8</sup> On August 23, 1992 appellant, then a 46-year-old food service worker, filed a traumatic injury claim alleging that on August 20, 1992 she injured her back while picking up a large mixing bowl. OWCP accepted the claim for sciatica, which was subsequently expanded to include the conditions of lumbar stenosis, L4-L5 spondylolisthesis and degenerative disc disease. Appellant resigned from the employing establishment effective February 13, 1994 and is currently not working.

On January 10, 2014 appellant requested reconsideration of the March 18, 2013 decision denying her request for an additional schedule award of her left lower extremity. In support of her request, appellant submitted factual and medical evidence including a November 7, 2013 report from Dr. Kenneth M. Faile, a treating Board-certified family practitioner. Dr. Faile indicated that he had treated appellant since 2002 and that her sciatica symptoms had worsened. Appellant also resubmitted impairment ratings by OWCP medical advisers dated March 13, 2002, September 16 and December 16, 2004.

By decision dated February 11, 2014, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>9</sup> 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) submit relevant and pertinent new evidence not previously considered by OWCP.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

### **ANALYSIS**

OWCP previously granted appellant a schedule award for a six percent impairment of her left lower extremity. By decision dated March 18, 2013, OWCP denied appellant's request for an additional schedule award of her left lower extremity. On November 22, 2013 the Board affirmed the March 18, 2013 decision. On January 29, 2014 OWCP received appellant's request for reconsideration dated January 10, 2014 of the March 18, 2013 decision. The issue presented on appeal is whether appellant 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. The Board finds that, in her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She 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.

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<sup>9</sup> 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.

<sup>10</sup> 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).

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

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

Accompanying her January 10, 2014 reconsideration request, appellant resubmitted medical reports from OWCP medical advisers which were previously addressed and evaluated by OWCP in its prior merit decisions. The submission of evidence which repeats or duplicates evidence already of record and considered by OWCP does not constitute a basis for reopening a case and is insufficient to warrant further merit review.<sup>13</sup>

Appellant also submitted a November 7, 2013 report by Dr. Faile, a treating Board-certified family practitioner, who indicated that appellant's sciatica symptoms had worsened. Although this report is new, it is irrelevant to the issue of appellant's claim for an additional schedule award for her left lower extremity as Dr. Faile provided no medical opinion on appellant's permanent impairment.<sup>14</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 constitute relevant and pertinent new evidence not previously considered.<sup>15</sup> Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board further finds that OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>13</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>14</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>15</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *W.C.*, 59 ECAB 372 (2008); *Susan A. Filkins*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 11, 2014 is affirmed.

Issued: September 12, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board