

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lincolnwood, IL, Employer**

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**Docket No. 15-1036  
Issued: August 3, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 7, 2015 appellant filed a timely appeal from a February 2, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of March 12, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On March 7, 2013 appellant, then a 32-year-old city carrier, filed a traumatic injury claim alleging that on March 5, 2013 she twisted her right ankle in the snow while in the performance

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of her federal duties. Following development, OWCP accepted the condition of right foot sprain and paid appropriate benefits. It subsequently upgraded the accepted conditions to include lisfranc tendon sprain.

Appellant filed a Form CA-7 claim for a schedule award on November 18, 2013. OWCP received a January 7, 2014 report from a physical therapist, Paul S. Pepich. In this report, Mr. Pepich related that he had evaluated appellant for permanent impairment, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He concluded that while appellant still reported pain and functional limitations in her life, according to the A.M.A., *Guides*, she had no ratable impairment.

By decision dated March 12, 2014, OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish that she sustained permanent impairment to a scheduled member due to her accepted work injury.

On January 21, 2015 OWCP received appellant's January 13, 2015 request for reconsideration in which she alleged that she was not given a follow-up magnetic resonance imaging (MRI) scan during the impairment rating and was only given an x-ray with the initial in-person test through her healthcare provider. Appellant contended that this one major lapse led her to believe that her initial rating did not produce the results needed to make the correct decision for an impairment rating. She also asserted that she has a lisfranc tendon sprain in her right foot and needed to wear arch supporting shoes for the remainder of her life. Appellant stated that the MRI scan would yield the conclusive results as to whether she reached maximum medical improvement and she was not provided one during the impairment rating.

By decision dated February 2, 2015, 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,<sup>2</sup> 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.<sup>3</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>4</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>5</sup>

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<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

## ANALYSIS

The Board finds that appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Consequently, appellant 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. While appellant believes further diagnostic testing should have been provided prior to rendering an impairment rating, this is a medical determination. Thus, this allegation, without more information, is insufficient to reopen appellant's claim for further merit review. The underlying issue in this case, entitlement to schedule award compensation, is a medical issue and must be addressed by relevant new medical evidence.<sup>6</sup> Appellant's statement and further explanation of her injury is not relevant and pertinent to the underlying issue in this case. Therefore, it is insufficient to require OWCP to reopen her claim for consideration of the merits.

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 meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.<sup>7</sup>

On appeal appellant alleges that she has a lisfranc tendon sprain of her right foot and has yet to be compensated for that condition. OWCP accepted the conditions of right foot sprain and lisfranc tendon sprain and found the evidence of record insufficient to support entitlement to a schedule award.

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<sup>6</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>7</sup> *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).

**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 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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