



## **FACTUAL HISTORY**

This case has previously been before the Board. On May 6, 2008 appellant, then a 55-year-old rural carrier, filed an occupational disease claim alleging that on May 4, 2008 she first realized that her right knee and swollen feet were employment related. OWCP accepted the claim for right ankle and knee tendinitis and placed appellant on the periodic rolls for temporary total disability.

By decision dated March 19, 2010, OWCP terminated appellant's compensation benefits effective November 3, 2009. In a decision dated April 8, 2011, the Board found that OWCP failed to meet its burden of proof due to an unresolved conflict in the medical opinion evidence between Dr. William A. Seeds, appellant's treating Board-certified orthopedic surgeon, and Dr. Michael J. Jurenovich, a second opinion Board-certified osteopathic orthopedic surgeon, with regard to whether appellant had any disability or continuing residuals of her accepted right ankle and knee tendinitis.<sup>2</sup> The Board reversed the November 3, 2009 decision terminating her compensation benefits and the March 19, 2010 hearing representative's decision affirming the termination. By decision dated May 7, 2014, the Board affirmed an April 15, 2013 hearing representative's decision affirming a September 13, 2012 decision terminating her compensation benefits.<sup>3</sup> In affirming the termination of her compensation benefits, the Board found that OWCP properly relied upon the opinion of the impartial medical examiner, Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, who negated a causal relationship between appellant's continuing conditions and disability related to her employment. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On July 16, 2014 counsel requested reconsideration and submitted a June 16, 2014 report from Dr. Seeds in support of the request.

In the June 16, 2014 report, Dr. Seeds noted that on February 17, 2004 appellant sustained left shoulder and left humerus injuries as the result of a fall at work. He stated that the extent of her shoulder disruption was not revealed until arthroscopic surgery which was performed on February 24, 2004. In concluding, Dr. Seeds opined that appellant's decreased shoulder strength and range of motion were due to the degenerative changes which he attributed to the shoulder injury sustained at work on February 17, 2004. He opined that she continued to suffer from residuals and disability from her accepted employment injury.

By decision dated September 17, 2014, OWCP denied reconsideration. It found Dr. Seeds' report considered another employment injury and made no mention of the accepted conditions under the current claim. Thus, OWCP found that the report failed to constitute new and relevant evidence which would warrant a merit review.

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<sup>2</sup> Docket No.10-1327 (issued April 8, 2011).

<sup>3</sup> Docket No. 13-2025 (issued May 7, 2014).

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</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) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>5</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>6</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>7</sup>

## ANALYSIS

In the most recent merit decision dated May 7, 2014, the Board affirmed an April 15, 2013 OWCP hearing representative's decision terminating appellant's compensation effective September 22, 2013 and that the weight of the medical evidence established that she had no further disability or residuals due to her accepted right ankle and knee tendinitis. On July 16, 2015 appellant's counsel requested reconsideration of the termination of her compensation.

As noted, the Board does not have jurisdiction over a merit decision of OWCP. 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. In her July 16, 2014 request for reconsideration, appellant 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 pertinent new and relevant medical evidence in this case. Appellant submitted a June 16, 2014 report from Dr. Seeds, which addressed disability and continuing residuals due to shoulder conditions sustained as the result of an alleged February 17, 2004 traumatic employment injury. However, this report does not require the reopening of appellant's claim as it is not relevant to the underlying issue in the case, *i.e.*, whether appellant continues to have disability and residuals as the result of her accepted right ankle and knee tendinitis sustained as a result of the March 4, 2008 occupational employment injury.<sup>8</sup>

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<sup>4</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>5</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>6</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>7</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).

<sup>8</sup> *D.K.*, 59 ECAB 141 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

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 new evidence not previously considered. The Board accordingly finds that she 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 contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that the attorney's arguments are not substantiated.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under section 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 17, 2014 is affirmed.

Issued: February 27, 2015  
Washington, DC

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

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

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