

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On July 26, 2005 appellant, then a 56-year-old licensed practical nurse, filed a Form CA-1, traumatic injury claim, alleging that on June 26, 2005 she injured her low back while lifting a patient. OWCP accepted her claim for acute sprain and strain of the lumbar region. Appellant did not stop work.

On June 20, 2012 appellant filed a claim for a schedule award for low back injury and cancer. In a July 17, 2012 letter, OWCP requested that she submit a report from her physician evaluating the extent of appellant's permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).³

Appellant submitted an October 15, 2012 report from Dr. Robert G. Savarese, an osteopath, who treated her for chronic low back pain after an injury in 2005. Dr. Savarese noted that appellant was moderately obese, had no scoliosis, tenderness, or trigger points, her reflexes were positive and equal, and she exhibited intact strength and sensation of the lower extremities. He diagnosed significant facet arthropathy at L3-4, L4-5, L5-S1 and recommended radiofrequency ablation. Appellant submitted reports from a physician's assistant dated January 14 and July 29, 2013, who treated her for ankle brachial index and low back pain. The physician's assistant diagnosed low back pain with lumbar radiculopathy and moderate stenosis at L3-4.

On July 10, 2013 appellant filed a second claim for a schedule award based upon the June 26, 2005 injury. In a November 6, 2013 letter, OWCP again requested that she submit a report from her physician evaluating the extent of her permanent impairment under the A.M.A., *Guides*.

In a decision dated January 31, 2014, OWCP denied appellant's most recent claim for a schedule award. It found that the medical evidence did not establish any permanent impairment.

In an undated appeal request form, appellant timely requested reconsideration. She submitted reports from a physician's assistant dated March 4 to November 18, 2013 who treated her for weakness and radiating low back pain. The physician's assistant diagnosed left hip osteoarthritis and low back pain with probable L5 nerve root irritation. Appellant underwent right hip injections and interlaminar epidural steroid injections. In reports dated July 29 and December 2, 2013, the physician's assistant treated appellant in a follow-up after a repeat L3-4 interlaminar epidural steroid injection and noted that appellant was at maximum medical improvement. She diagnosed degenerative disc disease of the lumbar spine and recommended an electromyogram (EMG). Appellant submitted a magnetic resonance imaging scan of the lumbar spine dated November 26, 2013 which revealed degenerative disc and spine disease of the lumbar spine at L3-S1, L3-4, L4-5, T10-11, and T11-12. She was treated by Dr. Savarese from March 7 to July 18, 2013 for left hip, low back, and groin pain. Dr. Savarese diagnosed left

³ A.M.A., *Guides* (6th ed. 2008).

hip pain with osteoarthritis, multilevel lumbar degenerative disc disease with facet pain, stenosis, and lumbar radiculopathy. He performed left hip intra-articular injections and bilateral L3-4 interlaminar epidural steroid injections. In reports dated November 21, 2013 and January 2, 2014, Dr. Savarese treated appellant for low back and leg pain. He noted the epidural steroid injections relieved symptoms but wore off and appellant presented with significant pain and numbness. Dr. Savarese diagnosed worsening stenosis at L3-4 with chronic lumbosacral radiculopathy, suspected lumbar stenosis, facet arthropathy, and diabetes. He noted the EMG revealed chronic denervation in the right gastroc and bilateral anterior tibialis. Appellant submitted a copy of the January 31, 2014 OWCP decision, previously of record.

In a March 26, 2014 decision, OWCP denied appellant's updated request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by [OWCP];
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

OWCP denied appellant's claim for a schedule award on the grounds that she failed to establish that she sustained permanent impairment to a scheduled member due to her accepted work injury. It later denied her reconsideration request without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b).

In her request 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, nor did she advance a new and relevant legal argument. The underlying issue in this case is whether she sustained permanent impairment to a scheduled member due to her accepted work injury. That is a medical issue which must be addressed by relevant new medical evidence.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in support of her claim.

Appellant submitted reports from Dr. Savarese from March 7, 2013 to January 2, 2014 which noted diagnoses, findings, and the treatment that he provided to her. However, these reports, while new, are not relevant because they do not address the issue of whether her diagnosed conditions were causally connected to her accepted work injury. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.⁸ Thus, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant also submitted reports from a physician's assistant. The Board has held that a physician assistant is not competent to render a medical opinion under FECA.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that she submitted sufficient evidence to establish permanent impairment to a scheduled member related to her work injury and was entitled to a schedule award. As explained, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warranted reopening of her claim for a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ *Johnnie B. Causey*, 57 ECAB 359 (2006).

⁹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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