

FACTUAL HISTORY

On April 15, 2005 appellant, a 54-year-old utility systems repair operator, sustained a traumatic injury in the performance of duty when he fell and hit his head and twisted his ankle while helping to move a pallet in the main boiler room. OWCP accepted his claim for facial laceration; right ankle strain; fracture of the fifth metatarsal on the right foot; L4-5 lumbar radiculopathy, for which he underwent a lumbar spinal herniated disc decompression with L3 laminectomy and L4-5 foraminotomies; and aggravation of preexisting cervical discogenic disease and cervical spondylolisthesis, for which he underwent a C4-5 anterior cervical discectomy.

In a decision dated January 30, 2013, OWCP denied appellant's schedule award claim on the grounds that the medical evidence did not support an impairment to a scheduled member or function of the body. Dr. Kenneth W. Eckmann, a Board-certified neurologist and second opinion physician, had found no evidence of cervical or lumbar radiculopathy or complex regional pain syndrome. It was his impression that appellant's active pathophysiological processes were peripheral neuropathy and bilateral ulnar neuropathy, to which he was highly predisposed by virtue of his long-standing diabetes mellitus and history of renal failure and dialysis. OWCP's medical adviser concurred that appellant had no impairment of the upper or lower extremities based on the accepted medical conditions.

On January 16, 2014 OWCP received appellant's reconsideration request. Appellant argued that OWCP failed to consider the June 18, 2012 impairment evaluation provided by Dr. Daniel R. Ignacio, the attending Board-certified physiatrist, who calculated a 35 percent impairment of the right upper extremity, a 30 percent impairment of the left upper extremity, a 52 percent impairment of the right lower extremity, and a 35 percent impairment of the left lower extremity, with references to specific tables and pages in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). Appellant added that OWCP failed to refer to Dr. Ignacio's impairment evaluation to OWCP's medical adviser.

Appellant supported his reconsideration request with an updated report from Dr. Ignacio. On December 26, 2013 Dr. Ignacio reviewed the opinions of Dr. Eckmann and the medical adviser and disagreed. In his opinion, it was very clear that appellant had a serious and complex spinal injury both in the cervical and lumbar spine, which required multiple surgeries. "Given this amount of spinal injuries and nerve injuries, it is expected to have significant sequelae." Dr. Ignacio noted that appellant in fact had significant weakness of the lower limbs with loss of balance and limited use along the upper extremities. He disagreed with Dr. Eckmann that there were no findings of cervical or lumbar radiculopathy, as this was fairly well established from the beginning of the injury in 2005 up to the present time. Dr. Ignacio also disagreed with Dr. Eckmann that appellant had no impairment in the upper and lower extremities.

In a decision dated March 27, 2014, OWCP denied appellant's reconsideration request. It noted that Dr. Ignacio's impairment evaluation was previously considered and reviewed in its January 30, 2013 decision.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of the standards for review. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

OWCP received appellant's reconsideration request within one year of its January 30, 2013 merit decision denying his schedule award claim. The request is therefore timely. The question for determination is whether the request meets at least one of the standards for obtaining a merit review of his case.

The Board has undertaken a limited review of OWCP's January 30, 2013 decision and notes that the decision makes no mention of the June 18, 2012 impairment evaluation performed by Dr. Ignacio, the attending physiatrist. OWCP's medical adviser's review of the file also makes no mention of this evaluation, which OWCP first received in July 2012. Appellant argues this was in error. In reaching any decision with respect to FECA coverage or entitlement, OWCP must consider all the new evidence presented by the claimant.⁶ OWCP failed to do that in this case. Accordingly, the Board finds that appellant's reconsideration request advanced new evidence not previously considered by OWCP.

As appellant's reconsideration request met at least one of the standards for obtaining a merit review of his case, the Board finds that OWCP improperly denied reconsideration. The

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608.

⁶ *Id.* at § 10.125(a).

Board will therefore reverse OWCP's March 27, 2014 decision and remand the case for an appropriate decision on appellant's schedule award claim.

CONCLUSION

The Board finds that OWCP improperly denied appellant's reconsideration request. Appellant's request met at least one of the standards for obtaining a merit review of his case.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2014 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action.

Issued: July 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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