

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

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**Y.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Jackson, MI, Employer**

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**Docket No. 15-406  
Issued: May 20, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 11, 2014 appellant filed a timely appeal of the August 29 and October 7, 2014 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days elapsed since the most recent merit decision dated May 16, 2014 and the filing of this appeal on December 11, 2014, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>3</sup>

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<sup>1</sup> With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f).

## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration and pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On September 9, 2013 appellant, then a 30-year-old mail processing clerk, filed a Form CA-2, notice of occupational disease, alleging that she developed a fractured left foot as a result of the prolonged standing on cement floors while in the performance of duty. OWCP accepted her claim for bilateral metatarsalgia and stress fracture of the right metatarsals. Appellant stopped work on August 23, 2013.

Appellant was treated by Dr. Rose Sotolongo, a podiatrist, on August 29, 2013, for pain in the left foot at the fourth and fifth dorsal. Dr. Sotolongo noted x-ray of the right foot revealed a stress fracture at the base of the third metatarsal. She diagnosed pain in limb, edema, stress fracture and foot deformity with metatarsalgia and recommended orthotics. In an October 21, 2013 report, Dr. Sotolongo noted that appellant had been released to work full time with restrictions on October 19, 2013. In a work capacity evaluation dated November 8, 2013, she noted that appellant could return to work full time with restrictions of no prolonged standing. In a subsequent duty status report dated February 18, 2014, Dr. Sotolongo again noted that appellant could return to work full time with restrictions. In another work capacity evaluation dated February 12, 2014, she noted that appellant could work eight hours per day with restrictions.

On April 24, 2014 appellant filed a claim for a schedule award. She submitted reports from Dr. Sotolongo, dated April 15, 2014, who had treated appellant for foot pain and lower back, stenosis and neuropathy aggravated by standing on concrete floors. Dr. Sotolongo diagnosed neuropathy pain from the lower back stenosis both feet, metatarsalgia resolved with orthoses, stress fracture of the metatarsals healed, and enthesopathy of tarsus stable. She recommended neuropathy compound cream. In a May 2, 2014 report, Dr. Sotolongo diagnosed lumbar stenosis and metatarsalgia. Appellant reported that foot pain prevented her from working. Dr. Sotolongo noted that she could not rule out malingering. In a work capacity evaluation dated April 23, 2014, she diagnosed lower back stenosis causing neuropathy. Dr. Sotolongo returned appellant to work regular duty and requested that she be provided a rubber pad on which to stand while working.

OWCP referred Dr. Sotolongo's report and the case record to an OWCP medical adviser for evaluation as to the extent of permanent partial impairment of the bilateral lower extremities permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).<sup>4</sup> In a report dated May 8, 2014, the medical adviser opined that appellant had zero percent impairment of the bilateral lower extremities. He advised that there was no clinical or radiographic evidence that supported any impairment of the lower extremities.

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

In a decision dated May 16, 2014, OWCP denied appellant's claim for a schedule award.

On August 25, 2014 appellant requested reconsideration. She submitted statements dated August 1, 2014 which noted that she was working in the automation department and wore special shoe inserts. Appellant reported not being able to work a full shift without pain medication. She submitted an April 15, 2014 report from Dr. Sotolongo, an April 23, 2014 work capacity report from Dr. Sotolongo, and a May 8, 2014 report from an OWCP medical adviser, all previously of record. An April 1, 2014 x-ray report noted mild hallus, mild halux valgus, and mild flexion deformity. In a July 30, 2014 work capacity evaluation, Dr. Sotolongo noted treating appellant for chronic pain and that she was unable to perform her usual job for eight hours a day with restrictions because she was unable to stand. She noted that appellant's examination was normal and she reached maximum medical improvement with regard to her feet but she still experienced chronic pain due to her back. Dr. Sotolongo noted that appellant sustained a possible stress fracture with pain and swelling which had resolved; however, she continued to complain of foot pain due to lumbar stenosis.

In an August 29, 2014 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

On September 8, 2014 appellant again requested reconsideration. She indicated that she was entitled to a schedule award because of the pain and suffering endured after working prolonged hours on a cement floor. Appellant indicated that the medication caused her to gain weight, she was required to wear shoe inserts, and her condition negatively affected her social life. She indicated that her physician had provided adequate information to support her claim. Appellant reported that she could hardly walk to the parking lot. She stated that she had used all her sick and annual leave, and now had to use leave without pay. Appellant submitted an x-ray report from Dr. Sotolongo dated April 1, 2014 and reports dated April 15 and 23, 2014, all previously of record.

In an October 7, 2014 decision, OWCP again denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>5</sup> 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 her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(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

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<sup>5</sup> 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>6</sup>

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.<sup>7</sup>

### ANALYSIS

OWCP, by decision dated May 16, 2014, denied appellant’s claim for a schedule award because she failed to establish permanent impairment due to her accepted work condition. Thereafter, on August 29 and October 7, 2014 it denied her reconsideration requests, without merit reviews.

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 her claim. In her August 25, 2014 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. Appellant did not advance a new and relevant legal argument. She submitted statements dated August 1, 2014 which noted that she was working in the automation department and wore special shoe inserts. Appellant noted not being able to work a full shift without pain medication. 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.<sup>8</sup> As appellant failed to submit any new and relevant medical evidence in support of her claim, her claim was denied without a merit review. In another request for reconsideration, dated September 8, 2014, she submitted an April 15, 2014 report from Dr. Sotolongo, an April 23, 2014 work capacity report from Dr. Sotolongo, and a May 8, 2014 report from an OWCP medical adviser. However, these reports are duplicative of evidence previously submitted and considered by OWCP in its May 16, 2014 decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>9</sup> Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a new July 30, 2014 work capacity evaluation from Dr. Sotolongo who treated appellant for chronic pain. Dr. Sotolongo noted that appellant was unable to

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<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>9</sup> *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984). Furthermore, as appellant has not established a compensable factor of employment, it medical evidence addressing causal relationship, even if new, would not be relevant. *See C.T.*, Docket No. 08-2160 (issued May 7, 2009) (if a claimant has not established any compensable employment factors, OWCP need not consider the medical evidence).

perform her usual job as she was unable to stand. She noted that appellant's examination was normal and she reached maximum medical improvement with regard to her feet but she still experienced chronic pain due to her back. Dr. Sotolongo noted that appellant sustained a possible stress fracture with pain and swelling which resolved; however, she continued to complain of foot pain due to lumbar stenosis. Also submitted was a new April 1, 2014 x-ray report which noted mild hallus, mild halux valgus and mild flexion deformity. However, these reports, while new, are not relevant because they do not specifically address the issue of whether appellant sustained permanent impairment to a scheduled member due 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.<sup>10</sup> Thus, these reports are insufficient to require OWCP to reopen the claim for a merit review.

With regard to her September 8, 2014, 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. Appellant did not advance a new and relevant legal argument. She indicated that she was entitled to a schedule award because of the pain and suffering she has endured after working prolonged hours on cement floors. Appellant indicated that medication caused her to gain weight, she was required to wear shoe inserts, had difficulty walking distances, and her condition negatively affected her social life. She indicated that her physician provided adequate information to support her claim. Appellant also asserted that, because of her condition, she had exhausted her leave. As noted, 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.<sup>11</sup> 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 his or her claim.

Appellant submitted an April 1, 2014 x-ray report from Dr. Sotolongo and other reports from Dr. Sotolongo dated April 15 and 23, 2014. However, as noted above, these reports from Dr. Sotolongo are duplicative of evidence previously submitted and considered by OWCP in its May 16 and August 29, 2014 decision. Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

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.

### **CONCLUSION**

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

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<sup>10</sup> *Johnnie B. Causey*, 57 ECAB 359 (2006).

<sup>11</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 7 and August 29, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 20, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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