



## **FACTUAL HISTORY**

On June 22, 2009 appellant, then a 52-year-old printing plant worker, was injured in the performance of duty when a freight elevator door struck him in the head, neck, and shoulder. OWCP initially accepted the claim for neck contusion, but subsequently expanded appellant's claim to include brachial neuritis/radiculitis, thoracic or lumbosacral neuritis/radiculitis, and lumbar intervertebral disc displacement without myelopathy.

On May 1, 2013 OWCP granted a schedule award for five percent permanent impairment of each upper extremity, for a total of 10 percent. The award covered a period of 31.2 weeks from June 22, 2010 through January 26, 2011. OWCP based the award on the district medical adviser's (DMA) March 29, 2013 report. In an August 10, 2012 report, Dr. Joshua M. Ammerman, a Board-certified neurosurgeon, found 10 percent permanent cervical spine impairment.<sup>3</sup> The DMA relied, in part, on Dr. Ammerman's examination findings, and found five percent permanent bilateral upper extremity impairment.

On June 14, 2013 appellant filed a claim (Form CA-7) for an increased schedule award. He filed a similar claim on May 5, 2014.

In a June 27, 2014 follow-up report, Dr. Ammerman noted that he last saw appellant in 2012, at which time he assigned 10 percent permanent impairment of the cervical spine due to a June 22, 2009 work-related injury. He further noted that appellant currently complained of neck pain, low back pain, and radiation of tingling and numbness into the hands and feet. On examination, appellant's motor testing was full in the arms and legs, and his reflexes were trace to 1+. Dr. Ammerman also noted that there was moderate restriction of cervical and lumbar range of motion. Lastly, he reported that sciatic tension signs and Spurling maneuver were negative. Dr. Ammerman recommended obtaining updated cervical and lumbar magnetic resonance imaging (MRI) scans, as well as a new set of cervical x-rays. He advised appellant to return once the additional studies were completed.

By decision dated August 1, 2014, OWCP denied appellant's claim for an increased schedule award. It noted that, while Dr. Ammerman referenced his previous 10 percent rating, he did not provide a current impairment rating.

OWCP subsequently received October 25, 2014 cervical and lumbar MRI scan results, as well as a November 24, 2014 follow-up examination report from Dr. Ammerman. Dr. Ammerman reviewed the recent MRI scans and examined appellant. He noted that he discussed the possibility of surgical intervention at C4-5 and L5-S1, but appellant was not currently interested. Dr. Ammerman advised that under the circumstances, appellant would have to continue to live with his symptoms. He indicated that appellant currently carries a permanent

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<sup>3</sup> No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations. *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006). Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole. 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000). However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5c(3) (February 2013).

impairment rating of 10 percent of the cervical spine related to his June 22, 2009 employment injury, “which remains unchanged.” Dr. Ammerman discharged appellant from his care and advised that he return on an as-needed basis.

On February 9, 2015 OWCP received appellant’s February 1, 2015 reconsideration request. Appellant submitted the appeal request form that accompanied OWCP’s August 1, 2014 decision. OWCP later received another follow-up report from Dr. Ammerman dated January 30, 2015. Dr. Ammerman reiterated that appellant continues to carry a 10 percent permanent impairment rating of the cervical spine related to his June 22, 2009 work injury. He noted that he had nothing to offer besides surgery, that “no further neurological follow up is required”; and that he did not expect appellant’s symptoms to change without surgical intervention.

In an April 16, 2015 decision, OWCP denied appellant’s request for reconsideration, and thus, did not review the merits of his claim.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</sup> One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>6</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

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<sup>4</sup> This section provides in pertinent part: “[t]he 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>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP’s decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *See also* Chapter 2.1602.4b.

<sup>7</sup> 20 C.F.R. § 10.606(b)(3).

<sup>8</sup> *Id.* at §§ 10.607(b), 10.608(b).

### ANALYSIS

OWCP received appellant's February 1, 2015 request for reconsideration on February 9, 2015. As noted, appellant submitted the appeal request form that accompanied the August 1, 2014 merit decision. He did not specify the grounds for his request. Appellant merely checked the appropriate space on the form indicating reconsideration. The Board finds that his February 1, 2015 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. Accordingly, he is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>9</sup>

Appellant also failed to submit any "relevant and pertinent new evidence" with his request for reconsideration. Dr. Ammerman's November 24, 2014 and January 30, 2015 follow-up examination reports reiterated his August 10, 2012 finding of 10 percent permanent cervical spine impairment. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>10</sup> Not only is this evidence repetitive, but OWCP also previously advised appellant that FECA did not provide for the payment of a schedule award for the permanent loss of use of the back/spine.<sup>11</sup> Consequently, Dr. Ammerman's November 24, 2014 and January 30, 2015 follow-up examination reports are insufficient to warrant further merit review. Because appellant did not provide any "relevant and pertinent new evidence," he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>12</sup> Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

### CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's case for further merit review under 5 U.S.C. § 8128(a).

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<sup>9</sup> *Id.* at § 10.606(b)(3)(i) and (ii).

<sup>10</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

<sup>11</sup> *See supra* note 3.

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board