

on December 14, 1978 she fell in the performance of duty and injured her knees and ankles.² The claim had not been initially forwarded to OWCP. On September 10, 1987 OWCP accepted bilateral contusions of the knees and ankles. The Board also noted that on October 3, 1986 appellant had filed an occupational disease claim (Form CA-2) alleging that she had developed arthritis as a result of the December 14, 1978 injury. OWCP denied this claim on May 31, 1988 finding that there was no rationalized medical evidence of record explaining how the diagnosed condition was causally related to the December 14, 1978 injury, or any other factors of her employment. The Board remanded the case for further development on the issue of whether appellant had an arthritis condition causally related to her federal employment. The Board found that a conflict in medical evidence had not been resolved by the physician selected as an impartial medical specialist.

Following development of the medical evidence, OWCP accepted a permanent aggravation of bilateral degenerative arthritis of the knees. By decision dated December 19, 1991, it issued a schedule award for a 33 percent impairment to each leg. Appellant underwent bilateral total knee replacement surgeries in October 2002.

By decision dated November 1, 2002, the Board set aside an OWCP decision dated October 18, 2001 denying authorization for the knee surgeries.³ The Board found that the report of the second opinion referral physician, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, was of diminished probative value as it was not based on the statement of accepted facts in the case. The Board noted that OWCP had accepted a permanent aggravation of bilateral knee degenerative arthritis, but Dr. Wehner had based her opinion as to knee surgery on a finding that appellant did not have an employment-related arthritis condition.

OWCP rescinded acceptance of a permanent aggravation of bilateral knee degenerative arthritis in a decision dated March 20, 2003.⁴ In a March 10, 2004 decision, the Board found it had failed to meet its burden of proof to rescind acceptance.⁵ In addition, the Board remanded the case to OWCP for an appropriate decision with respect to authorization of knee surgery.

On April 19, 2004 OWCP advised appellant that her claim was accepted for permanent aggravation of bilateral knee osteoarthritis and authorized reimbursement for bilateral knee replacement surgeries. Appellant submitted a May 3, 2004 form report (Form CA-1303) from Dr. John Martell, a Board-certified orthopedic surgeon, with respect to a permanent impairment to the knees. In a report dated August 9, 2004, an OWCP medical adviser opined that appellant had a 37 percent permanent impairment to each leg. The medical adviser opined that the impairment was based on a good result for total knee replacement surgery under the fifth edition of the American Medical Association, *Guides to the Evaluation of Per0manent Impairment*.

² Docket No. 89-904 (issued August 21, 1989).

³ Docket No. 02-276 (issued November 1, 2002).

⁴ OWCP denied modification of the rescission by decisions dated April 4 and October 10, 2003.

⁵ Docket No. 04-165 (issued March 10, 2004).

By decision dated September 28, 2004, OWCP issued a schedule award for an additional four percent to each leg. The period of the award was 23.04 weeks from October 11, 2003.

On July 21, 2014 OWCP received a Form CA-7 (claim for compensation) and appellant checked a box that she was claiming a schedule award.⁶ Appellant submitted a September 4, 2014 report from Dr. Gregory Primus, a Board-certified orthopedic surgeon, who indicated that she was treated for knee and ankle pain. Dr. Primus provided a history of a work-related injury on December 14, 1978 and noted that she presented with right knee and bilateral ankle pain. He provided results on examination and diagnosed knee pain, knee osteoarthritis, acquired genu varum, ankle and foot joint pain, and knee replacement prosthesis. In a report dated September 29, 2014, Dr. Primus provided results on examination and repeated the diagnoses found in the prior report. He recommended physical therapy and activity modification. Appellant also submitted a note dated November 11, 2014 from Dr. Harold Pye, a preventative medicine specialist, requesting authorization for a functional capacity evaluation (FCE), and notes from a physical therapist regarding a scooter.

By decision dated March 18, 2015, OWCP determined that appellant had failed to establish an increased schedule award.

On March 27, 2015 appellant requested reconsideration of the March 18, 2015 decision. She stated that Dr. Primus could not give her a percentage rating and Dr. Pye refused to fill out the medical form provided. Appellant submitted a prescription note for a wheel chair range scooter.

By decision dated May 6, 2015, OWCP declined to review the merits of the claim. It found the reconsideration request was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁷ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁹

⁶ The signature date on the form was March 8, 2003, and the form appeared to be copy of a previously submitted form.

⁷ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁸ *A. George Lamp*, 45 ECAB 441 (1994).

⁹ FECA Bulletin No. 09-03 (March 15, 2009).

A claimant seeking compensation under FECA has the burden to establish the essential elements of his or her claim.¹⁰ With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.¹¹ A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.¹² The medical evidence must include a detailed description of the permanent impairment.¹³

ANALYSIS -- ISSUE 1

In the present case, appellant submitted a claim for a schedule award that was received by OWCP on July 21, 2014. She received prior schedule awards of 33 percent impairment to each leg by decision dated December 19, 1991, and an additional 4 percent impairment to each leg by decision dated September 28, 2004.

It is appellant's burden of proof to submit medical evidence to establish an increased permanent impairment. The medical evidence she offered did not discuss a permanent impairment to the legs. Dr. Primus did not provide a detailed description of a permanent impairment, or provide an opinion as to the degree of impairment under the A.M.A., *Guides*. Dr. Pye provided only a brief note referring to an FCE authorization request. Further, physical therapists are not physicians under FECA and their reports are of no probative medical value.¹⁴

The Board accordingly finds appellant did not meet her burden of proof. Appellant did not submit probative medical evidence of an increased employment-related permanent impairment to her legs.

On appeal, appellant states that she did send updated reports regarding her knee condition as requested. The Board has reviewed the evidence of record that was before OWCP as of March 18, 2015. For the reasons noted, appellant did not establish an increased permanent impairment.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁵ OWCP's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Edward W. Spoor*, 54 ECAB 806, 810 (2003).

¹² *See Rose V. Ford*, 55 ECAB 449 (2004).

¹³ *See Vanessa Young*, 55 ECAB 575 (2004).

¹⁴ *See Barbara J. Williams*, 40 ECAB 649 (1989); 5 U.S.C. § 8101(2).

¹⁵ *Id.* at § 8128(a)(providing that "[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.")

law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP.¹⁶ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.¹⁷

ANALYSIS -- ISSUE 2

In her application for reconsideration, appellant reported that Dr. Primus would not provide an impairment rating and that she had been referred to Dr. Pye for a rating. She stated that Dr. Pye refused to complete a form report regarding permanent impairment. While appellant has asserted that her attending physicians have been unable to provide medical reports to support her claim for a schedule award, it is still her burden of proof to submit that supporting medical evidence. Her letter does not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP.

With respect to new evidence, appellant submitted a prescription note regarding a scooter. She did not submit any new and relevant evidence tending to show she had a permanent impairment. The Board accordingly finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), and therefore OWCP correctly declined to reopen the case for merit review.

CONCLUSION

The Board finds appellant did not establish entitlement to an increased schedule award. The Board also finds OWCP properly denied appellant's reconsideration request without merit review of the claim.

¹⁶ 20 C.F.R. § 10.606(b)(3).

¹⁷ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 6 and March 18, 2015 are affirmed.

Issued: September 8, 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