

On appeal appellant contends that she has provided new medical evidence establishing permanent impairment.

FACTUAL HISTORY

On December 19, 2013 appellant, then a 47-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a left ankle condition due to continuous standing and sitting. OWCP accepted the claim for left ankle sprain and left ankle/foot osteoarthritis, and paid wage-loss compensation for intermittent periods from December 19, 2013 to July 15, 2015.

On January 4 and 21, and February 22, 2016 appellant filed claims for a schedule award (Form CA-7).

In a letter dated January 27, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim for a schedule award as her treating physician found that she had not yet reached maximum medical improvement. It advised appellant to provide a medical report from a physician providing an impairment rating using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (hereinafter A.M.A., *Guides*).

In May 30, 2008 treatment notes, Dr. David R. Richardson, a Board-certified orthopedic surgeon, observed that appellant was beginning to have some left posterior tibial tendinitis. He recommended a functional capacity evaluation to determine work restrictions.

In a September 10, 2015 report, Dr. Richardson diagnosed left posterior tibial tendinitis and right posterior tibial insufficiency. He provided a history of illness and physical examination findings. Dr. Richardson reported bilateral pes planus, tenderness on palpation over her bilateral distal posterior tibial tendon inserts and over the ankle lateral aspect distal to the lateral malleolus, and inability to perform bilateral single limb heel rise.

In treatment notes and reports dated October 5, December 14, 2015, and February 15, 2016, Dr. Richardson diagnosed left posterior tibial tendinitis and right posterior tibial insufficiency and provided examination findings and work restrictions.

By decision dated March 3, 2016, OWCP denied appellant's request for a schedule award. It found the medical evidence of record failed to establish permanent impairment of a scheduled member.

Subsequent to the denial of appellant's schedule award claim, OWCP received a copy of a December 14, 2015 report from Dr. Richardson, in which he diagnosed left posterior tibial tendinitis and right posterior tibial insufficiency and provided examination findings.

On May 2, 2016 OWCP received appellant's request for reconsideration. By decision dated May 16, 2016, it denied her request for reconsideration, finding that Dr. Richardson's December 14, 2015 report was duplicative and previously considered in its March 3, 2015 decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

On May 2, 2016 appellant requested reconsideration of the March 3, 2016 decision that denied her claim for a schedule award. The underlying issue on reconsideration is medical in nature, whether appellant established a permanent impairment of a scheduled member.

Appellant's April 3, 2016 request for reconsideration neither alleged, nor demonstrated 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. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).⁷

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. Appellant resubmitted a treatment note dated December 14, 2015 from Dr. Richardson which diagnosed left posterior tibial tendinitis and right posterior tibial insufficiency and provided examination findings. However, the Board has held that 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.⁸ As the December 14, 2015 treatment note had been previously submitted to the record on February 29, 2016 and considered by OWCP in

³ Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁴ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ 20 C.F.R. § 10.607(a).

⁶ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *James W. Scott*, 55 ECAB 606 (2004).

its decision dated May 3, 2016, it is duplicative and does not constitute relevant and pertinent new evidence.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), as 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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant argues that she has submitted new medical evidence establishing permanent impairment. As discussed above, the Board can only review evidence that was before OWCP prior to its May 16, 2016 decision.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits under 5 U.S.C. § 8128(a).

⁹ See *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *D.K.*, 59 ECAB 141 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *Supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 16, 2016 is affirmed.

Issued: March 3, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board