

On appeal, appellant asserts that the medical evidence establishes that he sustained a ratable impairment to the right eye causally related to the accepted senile macular degeneration.

FACTUAL HISTORY

OWCP accepted that on September 17, 1992 appellant, then a 41-year-old boiler plant operator, sustained senile right macular degeneration when a steel door struck the back of his head, rendering him unconscious. It accepted a recurrence of disability commencing May 15, 1996. Appellant's claim remained open for medical treatment.³

In a November 30, 1998 report, Dr. Christopher Patitsas, a Board-certified ophthalmologist and second opinion physician, diagnosed pigment maculopathy and Horner's syndrome of the right eye related to the accepted injury. He noted that appellant had full visual fields and 20/20 acuity without correction.

On April 12, 1999 appellant claimed a schedule award. By decision dated October 13, 1999, OWCP denied the schedule award claim finding that the medical evidence did not establish a ratable impairment of the right eye according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Following a hearing, it issued a June 2, 2000 decision affirming the October 13, 1999 decision on the grounds that the medical evidence did not establish a ratable impairment to the right eye.

On December 21, 2007 appellant claimed a recurrence of disability. He did not stop work. In a May 27, 2008 report, Dr. William L. Saad, an attending Board-certified ophthalmologist, diagnosed right macular degeneration, with unaided acuity of 20/50. By decision dated June 24, 2008, OWCP denied his recurrence of disability claim on the grounds that causal relationship was not established. It found that Dr. Saad did not address how or why the accepted macular degeneration continued to affect appellant's vision in December 2007.

In a January 17, 2012 report, Dr. Pamela Rath, an attending Board-certified ophthalmologist, provided a history of injury and treatment. She diagnosed pigment epithelial detachment and ptosis in the right eye. Dr. Rath attributed appellant's vision loss to flattening of the pigment epithelial detachment. She could not determine whether his condition was work related as she did not treat him at the time of the 1992 injury. In a March 15, 2012 report, Dr. Rath noted that appellant had scarring in the right macula, decreasing his vision to 20/100. She opined that he had macular scarring but did not have macular degeneration. Dr. Rath explained that appellant had permanent vision loss that "sounds like it may have been from a previous injury."

On May 8, 2012 appellant claimed a schedule award. In a May 15, 2012 letter, OWCP advised him of the additional evidence needed to establish his claim. It requested a narrative

³ In an April 18, 1997 report, Dr. Richard C. Lanning, an attending Board-certified ophthalmologist, noted that appellant had 20/30 vision in his right eye with unchanged pigment stippling on the right posterior pole. In a March 31, 1999 report, Dr. Randall Beatty, an attending Board-certified orbital and oculoplastic surgeon, opined that appellant required a right levator resection to elevate his eyelid as the injury caused a levator disinsertion.

report from his attending physician finding a ratable impairment according to the sixth edition of the A.M.A., *Guides*.

In response, appellant submitted a June 1, 2012 report from Dr. Rath, finding that his right eye condition was permanent and stationary. Dr. Rath noted that he had 20/100 visual acuity in the right eye. She explained that as she did not examine appellant at the time of the 1992 injury, she could not say with “100 percent certainty whether or not it is related.”

By decision dated June 21, 2012, OWCP denied appellant’s schedule award claim on the grounds that the medical evidence did not demonstrate a ratable impairment of the right eye.

In a June 9, 2013 letter, appellant requested reconsideration. He asserted that the medical record established a worsening right eye condition. Appellant resubmitted Dr. Patitsas’ November 30, 1998 report previously of record. He also provided a new March 15, 2012 report from Dr. Rath, noting blurred and distorted vision in the right eye. Dr. Rath opined that appellant’s vision loss was permanent.

By decision dated June 27, 2013, OWCP denied reconsideration as appellant’s June 9, 2013 letter did not raise a substantive legal question or include new, relevant evidence. It found that Dr. Patitsas’ November 30, 1998 report was previously considered by OWCP prior to the October 13, 1999 denial of appellant’s schedule award claim. OWCP further found that, although Dr. Rath’s March 15, 2012 report was new, it was not relevant to the case as she did not find a ratable impairment of the right eye according to the A.M.A., *Guides*.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, section 10.606(b)(2) of Title 20 of the Code of Federal 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. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof. She need only submit relevant, pertinent evidence not previously considered by OWCP. When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether it properly applied the standards set forth at section 10.606(b)(2) to the claimant’s application for reconsideration and any evidence submitted in support thereof.

ANALYSIS

In his June 9, 2013 request for reconsideration, appellant reiterated his prior arguments that the medical evidence submitted supported that he had a worsening right eye condition. He did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant

did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument.

Appellant submitted a copy of the November 30, 1998 report of Dr. Patitsas, a Board-certified ophthalmologist and second opinion physician. It is well established that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁴ Appellant also submitted a March 15, 2012 report from Dr. Rath. Although this report is new, it is irrelevant to the schedule award claim as Dr. Rath did not opine that she had a ratable impairment of the right eye.⁵

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. The June 27, 2013 decision denying reconsideration is proper under the law and facts of the case.

On appeal, appellant asserts that the medical evidence establishes that he sustained a ratable impairment of the right eye causally related to accepted senile macular degeneration. As stated above, the Board does not have jurisdiction over the merits of the claim. In any event, appellant's physicians have not opined that appellant had a permanent impairment of the right eye, due to his accepted injury, pursuant to the sixth edition of the A.M.A., *Guides*.

CONCLUSION

The Board further finds that OWCP properly denied reconsideration.

⁴ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁵ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2013 is affirmed.

Issued: April 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board