

FACTUAL HISTORY

This case has previously been on appeal before the Board. In a June 2, 2005 decision, the Board found that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted right thoracic outlet syndrome.² On November 29, 2012 the Board issued an order remanding case.³ In the remand order, the Board set aside the November 25, 2011 OWCP decision, which denied a merit review with regard to whether appellant had established permanent impairment of an upper extremity. The Board found that while OWCP stated that certain documents submitted by appellant were not of record, the evidence showed that OWCP had received these documents. The Board remanded the case for OWCP to obtain these records and to conduct a merit review of the claim. The facts and history contained in the prior appeals are incorporated by reference.

Subsequent to the Board's November 29, 2012 order, OWCP, in an April 2, 2013 decision, denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body as a result of her December 17, 1997 occupational injury.

On March 12, 2014 appellant requested reconsideration. She advised that she was enclosing additional evidence. In an August 22, 2013 treatment note, Dr. Kimberly Monnell, a Board-certified neurologist, noted appellant's history, reported findings, and diagnosed brachial plexus palsy, cervical spondylosis, right arm pain, and carpal tunnel syndrome of the right wrist. In a March 7, 2014 report, Dr. Monnell noted that appellant was seen for right brachial plexopathy, chronic and cervical spondylosis and released from care. A July 9, 2013 electromyogram (EMG) and nerve conduction study (NCS) performed for Dr. Monnell showed a sensory neuropathy of the upper extremities and possible signs of brachial plexopathy on the right.

A June 3, 2014 magnetic resonance imaging (MRI) scan of the cervical spine, read by Dr. John M. Razook, a Board-certified diagnostic radiologist, revealed moderate to severe multilevel foraminal stenosis, moderate multilevel thecal sac stenosis, involving her C4-5 and C5-6 levels, and no bone marrow edema. OWCP also received an October 29, 2013 functional capacity evaluation (FCE).

In a decision dated April 17, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP may reopen a case for review on the merits 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 if the written

² Docket No. 05-78 (issued June 2, 2005).

³ Docket No. 12-460 (issued November 29, 2012).

⁴ 5 U.S.C. § 8128(a).

application for reconsideration, including all supporting documents, sets forth arguments and contains 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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

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.⁶

ANALYSIS

In an April 3, 2013, decision, OWCP denied appellant’s claim for a schedule award. It found that the evidence did not support permanent impairment. Appellant timely requested reconsideration on March 12, 2014. The issue presented is whether she met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her application for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument.

Appellant submitted new evidence which included an August 22, 2013 treatment note from Dr. Monnell, who noted her history, findings, and diagnoses. She also provided a March 7, 2014 report in which Dr. Monnell noted that appellant was seen for right brachial plexopathy, chronic and cervical spondylosis and released from care. Appellant further submitted a July 9, 2013 EMG and NCS report, a June 3, 2014 cervical spine MRI scan report by Dr. Razook, and an October 29, 2013 FCE report. However, none of the reports provided a physician’s permanent impairment rating caused by her accepted condition. The Board finds that these reports are not relevant to the issue of whether appellant has impairment to a scheduled member or function of her body as a result of her accepted condition.⁷

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

⁵ 20 C.F.R. § 10.606(b).

⁶ *Id.* at § 10.608(b).

⁷ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

On appeal, appellant argued that she had a new impairment rating and submitted new evidence with her appeal. The Board has no jurisdiction to review this evidence for the first time on appeal.⁸ However, appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).