

**United States Department of Labor
Employees' Compensation Appeals Board**

D.D., Appellant)	
)	
and)	Docket No. 24-0890
)	Issued: October 21, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 5, 2024 appellant filed a timely appeal from July 23 and August 22, 2024 merit decisions and an August 28, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than 22 percent permanent impairment of the right lower extremity and greater than 11 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 15, 1999 appellant, then a 40-year-old mechanic helper, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 1999 he injured his cervical spine when he reached overhead to pull down an air hose from a reel and felt a pop in his neck and upper back while in the performance of duty.³ He stopped work on February 1, 1999. OWCP accepted appellant's claim for herniated disc at C5-6. It paid him wage-loss compensation on the periodic rolls, effective July 3, 1999. On August 16, 1999 appellant returned to part-time, modified duty for four hours per day.

On May 10, 2000 OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity (right leg) and two percent permanent impairment of the left lower extremity (left leg). The period of the award ran for 11.52 weeks.

On December 21, 2022 appellant filed a claim for compensation (Form CA-7) for an additional schedule award.

On January 17, 2023 OWCP referred appellant to Dr. Kala Danushkodi, a Board-certified physiatrist, for a second opinion evaluation and to provide an impairment rating in conformity with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ and *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*), which is a supplemental publication of the sixth edition of the A.M.A., *Guides*.

In a January 31, 2023 report, Dr. Danushkodi described the February 1, 1999 employment injury and noted appellant's subsequent work-related injuries. She recounted his complaints of constant neck pain and low back pain radiating to the right upper extremity. On physical examination, Dr. Danushkodi observed C7 tenderness of the cervical spine and normal

² Docket No. 24-0203 (issued May 2, 2024).

³ OWCP assigned the present claim OWCP File No. xxxxxx008. Appellant has several previously accepted traumatic injury claims. Under OWCP File No. xxxxxx946, OWCP accepted that he sustained a lumbar strain and lumbar disc herniation, which required surgery, causally related to an October 15, 1990 employment injury. Under OWCP File No. xxxxxx780, it accepted that appellant sustained a lumbar strain causally related to an August 14, 1991 employment injury. Under OWCP File No. xxxxxx742, OWCP accepted that he sustained a recurrent herniated disc at L4-5 causally related to a September 16, 1991 employment injury. Under OWCP File No. xxxxxx006, it accepted that appellant sustained a lumbar strain causally related to a September 22, 1997 employment injury. Under OWCP File No. xxxxxx727, OWCP accepted his claim for lumbar strain causally related to a September 15, 1998 employment injury. Under OWCP File No. xxxxxx678, appellant also filed a traumatic injury claim on September 16, 1998 alleging that on that date he experienced back pain while in the performance of duty. However, by decision dated October 30, 1998, OWCP denied his claim. OWCP has administratively combined OWCP File Nos. xxxxxx008, xxxxxx946, xxxxxx780, xxxxxx006, xxxxxx727, xxxxxx678, and xxxxxx742, with the latter designated as the master file.

⁴ A.M.A., *Guides* (6th ed. 2009).

range of motion (ROM). Spurling's test caused radiating pain to the right shoulder. Examination of the lumbar spine revealed mild tenderness of the sacroiliac joint, positive bilateral straight leg raise testing, and diminished sensation of the right L5-S1 and left L5 dermatomes. Dr. Danushkodi reported that appellant had reached maximum medical improvement (MMI) as his present symptoms were related to post-lumbar laminectomy syndrome and degenerative changes secondary to lumbar stenosis. She diagnosed post-lumbar laminectomy syndrome.

Dr. Danushkodi referred to the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-12 (Peripheral Nerve Impairment), page 535, the class of diagnosis (CDX) for sciatic right lower extremity mild sensory deficit resulted in a Class 1 impairment with a default value of four percent. She assigned a grade modifier for functional history (GMFH) of 2 and a grade modifier for clinical studies (GMCS) of 3 for severe pathology as demonstrated by diagnostic imaging. Dr. Danushkodi indicated that a grade modifier for physical examination (GMPE) was inapplicable because the physical examination was used to define the class. She utilized the net adjustment formula, to determine that the +3 net adjustment resulted in 9 percent permanent impairment for sensory deficit and 14 percent permanent impairment for motor deficit of the right lower extremity. Dr. Danushkodi found that, utilizing the same table and grade modifiers, appellant also had 9 percent permanent impairment for sensory deficit and 14 percent permanent impairment for motor deficit of the left lower extremity. She concluded that he had a total of 22 percent permanent impairment of each lower extremity.

OWCP forwarded Dr. Danushkodi's January 31, 2023 report to Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as an OWCP district medical adviser (DMA), for review and opinion on whether appellant sustained permanent impairment of his lower extremities under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. In a report dated March 16, 2023, Dr. Ugokwe utilized *The Guides Newsletter* and indicated that appellant had a default value of one percent for mild sensory deficit of the left L5 nerve and a net adjustment of +2 for functional history and examination, which resulted in two percent permanent impairment. He also assigned mild motor deficit of the left L5 nerve with a default value of five percent and a net adjustment of +2 for history and examination, which resulted in nine percent permanent impairment. Dr. Ugokwe concluded that appellant had a total of 11 percent permanent impairment of the left lower extremity. Regarding appellant's right lower extremity, he indicated that for mild sensory deficit of the right L5 nerve deficit appellant had a default of one percent and a net adjustment of +2 for history and examination, which resulted in two percent permanent impairment. Dr. Ugokwe also assigned a default of five percent permanent impairment for mild motor deficit of the right L5 nerve and a net adjustment of +2 for history and examination, which resulted in nine percent permanent impairment. He concluded that appellant had a total of 11 percent permanent impairment of the right lower extremity. Dr. Ugokwe reported that the A.M.A., *Guides* did not allow for use of the ROM rating method for the diagnosis in question. He explained that he disagreed with Dr. Danushkodi's impairment rating of 22 percent permanent impairment of each lower extremity because she used the diagnosis for sciatic nerve for her calculation instead of using individual nerve roots. Dr. Ugokwe reported that appellant reached MMI as of January 31, 2023.

On March 28, 2023 OWCP requested that Dr. Ugokwe clarify whether appellant's current impairment rating included appellant's "prior percentage awarded or if it should be

considered an addition to the prior percentage awarded.” It informed him that appellant had received a prior award of two percent permanent impairment for each of his lower extremities due to his spinal injury.

In an April 5, 2023 report, Dr. Ugokwe explained that appellant’s current impairment rating included the previous award of two percent permanent impairment for each lower extremity. He reported that appellant had additional impairment rating of nine percent permanent impairment for each lower extremity.

On April 27, 2023 OWCP granted appellant a schedule award for nine percent permanent impairment of each lower extremity. The period of the award ran for 51.84 weeks for the period January 31, 2023 through January 28, 2024.

On May 11, 2023 appellant, through his then-counsel, requested reconsideration. Counsel asserted that the payment dates for the schedule award should have started at least from 2019. Appellant submitted an April 27, 2023 statement in which he noted his disagreement with Dr. Ugokwe’s March 16 and April 5, 2023 reports. He alleged that he had received insufficient schedule award compensation. Appellant also submitted a January 9, 2020 letter by Dr. Christine L. Moore, an osteopath Board-certified in internal medicine, hematology, and medical oncology, who discussed appellant’s self-reported inability to work.

By decision dated August 8, 2023, OWCP denied modification of its April 27, 2023 decision.

On August 19, 2023 appellant requested reconsideration. In a statement of even date, he alleged that he sustained injuries to two areas of his spine, in his lumbar and cervical spine. Appellant explained that he received a schedule award for his lumbar spine, but he was not paid a schedule award for permanent impairment to his cervical spine.

By decision dated November 8, 2023, OWCP denied appellant’s request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On November 14, 2023 OWCP issued a decision, which was essentially identical to the April 27, 2023 decision granting appellant a schedule award for nine percent permanent impairment of each lower extremity. The period of the award ran for 51.84 weeks for the period January 31, 2023 through January 28, 2024.

In a statement dated November 15, 2023, appellant again alleged that he received insufficient schedule award compensation. He submitted a partial copy of a September 18, 2002 report by Dr. Moore, which did not contain an impairment rating, and articles concerning the calculation of schedule awards.

On November 16, 2023 OWCP again referred the claim, along with an updated SOAF, to Dr. Ugokwe, serving as a DMA, for an addendum report regarding whether appellant sustained an increase in permanent impairment.

In a December 8, 2023 report, Dr. Ugokwe opined that appellant had 11 percent permanent impairment of each lower extremity, which included the previously awarded 2 percent permanent impairment for each lower extremity.

By decision dated December 18, 2023, OWCP denied appellant's claim for an additional schedule award, finding that he was not entitled to schedule award compensation for greater than 11 percent permanent impairment of each lower extremity.

Appellant appealed to the Board and, by decision dated May 2, 2024,⁵ the Board set aside OWCP's November 14 and December 18, 2023 decisions. The Board found that Dr. Danushkodi's January 31, 2023 report required clarification, noting that Dr. Danushkodi did not apply the standards of *The Guides Newsletter*, which provides for rating permanent impairment based on peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries.⁶ The Board remanded the case to OWCP for further development, to be followed by a *de novo* decision. The Board directed OWCP to obtain a supplemental report from Dr. Danushkodi regarding whether appellant sustained additional permanent impairment due to work-related injuries under the standards of the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

On May 6, 2024 OWCP requested that Dr. Danushkodi provide a supplemental report clarifying the matters raised in the Board's May 2, 2024 decision.⁷

In a May 23, 2024 report, Dr. Danushkodi discussed appellant's factual and medical history, including the findings of her January 23, 2023 examination of appellant. She provided an impairment rating of the lower extremities under the standards of *The Guides Newsletter*, including Proposed Table 2 (Spinal Nerve Impairment: Upper Extremity Impairments). Dr. Danushkodi found that appellant's mild sensory deficit associated with the L5 nerve distribution of the right lower extremity warranted a Class 1 default value of one percent. She determined that appellant had a GMFH of 2 for his antalgic limp and ambulation without an assistive device, and a GMCS of 3 for severe pathology as demonstrated by diagnostic imaging. Dr. Danushkodi found that a GMPE was inapplicable as the physical examination was used to determine the class. She applied the net adjustment formula to determine that the +3 net adjustment resulted in two percent permanent impairment for sensory deficit associated with the right L5 nerve. Utilizing the same table and grade modifiers, Dr. Danushkodi found that appellant's right-sided mild motor deficit fell under Class 1 with a default value of five percent, and that application of the net adjustment formula yielded nine percent permanent impairment for this motor deficit. She combined the 2 percent and 9 percent values to equal 11 percent permanent impairment of the right lower extremity for total deficits associated with the right L5 nerve. For deficits associated with the right S1 nerve, utilizing the same table and grade modifiers, Dr. Danushkodi again found that appellant's condition fell under Class 1 (mild sensory and motor deficits) and applied the net adjustment formula to determine that the +3 net adjustment resulted in two percent permanent impairment for sensory deficit and nine percent permanent impairment for motor deficit. She combined the 2 percent and 9 percent values to equal 11 percent permanent impairment of the right lower extremity for total deficits associated with the right S1 nerve. Combining the impairment ratings associated with the right L5 and S1

⁵ *Supra* note 2.

⁶ The Board also indicated that Dr. Danushkodi did not provide an adequate opinion regarding whether appellant sustained upper extremity permanent impairment due to the accepted cervical injury.

⁷ On May 8, 2024 OWCP received a May 2, 2024 statement in which appellant asserted that he did not receive sufficient schedule award compensation.

nerves yielded a total permanent impairment of the right lower extremity of 22 percent. Dr. Danushkodi also found that, utilizing the same table and grade modifiers, appellant also had two percent permanent impairment for sensory deficit and nine percent permanent impairment for motor deficit associated with the L5 nerve of the left lower extremity. She concluded that appellant had a total of 22 percent permanent impairment of the right lower extremity and a total of 11 percent permanent impairment of the left lower extremity.⁸

On June 24, 2024 OWCP requested that Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as an OWCP DMA, review Dr. Danushkodi's May 23, 2024 report and provide his own opinion on permanent impairment. In a July 16, 2024 report, Dr. Tontz indicated that he agreed with Dr. Danushkodi's application of the sixth edition of the A.M.A., *Guides*, including *The Guides Newsletter*, and her determination that appellant had 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity.

By *de novo* decision dated July 23, 2024, OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of the right lower extremity. The award ran for 31.68 weeks from May 23 through December 30, 2024. Appellant therefore had been compensated for 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity. OWCP indicated that Dr. Danushkodi did not adequately address appellant's claimed upper extremity permanent impairment and that further development of this issue would occur before a determination was made.

On July 29, 2024 appellant requested reconsideration of the July 23, 2024 decision. He submitted a July 28, 2024 statement in which he argued that he had not received sufficient schedule award compensation.

By decision dated August 22, 2024, OWCP denied modification of its July 23, 2024 decision.

On August 25, 2024 appellant requested reconsideration of the August 22, 2024 decision. In an August 25, 2024 statement, he argued that pages were missing from the reports of Dr. Danushkodi and Dr. Tontz.

By decision dated August 28, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁹ and its implementing regulation¹⁰ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results

⁸ Dr. Danushkodi also indicated, "Cervical Spine 0% [upper extremity impairment] no neurological deficit."

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404.

and to ensure equal justice under the law to all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹¹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹²

Neither FECA nor its implementing 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.¹³ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹⁴ The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*, which is a supplemental publication of the sixth edition of the A.M.A., *Guides*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish greater than 22 percent permanent impairment of the right lower extremity and greater than 11 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

The Board finds that Dr. Danushkodi, OWCP's referral physician, provided a proper assessment of the permanent impairment of appellant's lower extremities. In a May 23, 2024 report, she provided an impairment rating under the standards of *The Guides Newsletter*, including those contained in Proposed Table 2. Dr. Danushkodi found that appellant's mild sensory deficit associated with the L5 nerve distribution of the right lower extremity resulted in a Class 1 impairment with a default value of one percent. She determined that appellant had a GMFH of 2 for his antalgic limp and ambulation without an assistive device, and a GMCS of 3 for severe pathology as demonstrated by diagnostic imaging. Dr. Danushkodi found that a GMPE was inapplicable as the physical examination was used to determine the class. She applied the net adjustment formula to determine that the +3 net adjustment resulted in 2 percent permanent impairment for sensory deficit associated with the right L5 nerve. Utilizing the same table and grade modifiers, Dr. Danushkodi found that appellant's right-sided mild motor deficit fell under Class 1 resulting in a default value of five percent, and that application of the net adjustment formula, yielded nine percent permanent impairment for this motor deficit. She

¹¹ *Id.* See also *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹³ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); see *A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

¹⁴ *Supra* note 12, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (March 2017).

¹⁵ *Supra* note 12, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

combined the 2 percent and 9 percent values to equal 11 percent permanent impairment of the right lower extremity for total deficits associated with the right L5 nerve. For deficits associated with the right S1 nerve, utilizing the same table and grade modifiers, Dr. Danushkodi again found that appellant's condition fell under Class 1 and applied the net adjustment formula, (to determine that the +3 net adjustment resulted in two percent permanent impairment for sensory deficit and nine percent permanent impairment for motor deficit. She combined the 2 percent and 9 percent values to equal 11 percent permanent impairment of the right lower extremity for total deficits associated with the right S1 nerve. Combining the impairment ratings associated with the right L5 and S1 nerves yielded a total permanent impairment of the right lower extremity of 22 percent. Dr. Danushkodi also found that, utilizing the same table and grade modifiers, appellant also had two percent permanent impairment for sensory deficit and nine percent permanent impairment for motor deficit associated with the L5 nerve of the left lower extremity. She concluded that appellant had a total of 22 percent permanent impairment of the right lower extremity and a total of 11 percent permanent impairment of the left lower extremity. Dr. Tontz, serving as an OWCP DMA, indicated in a July 16, 2024 report that he agreed with Dr. Danushkodi's application of the sixth edition of the A.M.A., *Guides*, including *The Guides Newsletter*, and with her determination that appellant had 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity.

The Board finds that Dr. Danushkodi's May 23, 2024 impairment rating is well rationalized and is entitled to the weight of the evidence.¹⁶ Dr. Danushkodi's impairment rating is also supported by the opinion of Dr. Tontz. As there is no rationalized medical report of record providing a rating of permanent impairment greater than 22 percent permanent impairment of the right lower extremity and 11 percent permanent impairment of the left lower extremity, for which schedule award compensation has previously been received, appellant has not met his burden of proof to establish entitlement to an increased schedule award for permanent impairment of the lower extremities.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.¹⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

¹⁶ See *Y.S.*, Docket No. 19-0218 (issued May 15, 2020); *R.D.*, Docket No. 17-0334 (issued June 19, 2018).

¹⁷ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²¹ Where a legal argument presented has no reasonable color of validity, OWCP is not required to reopen the case for merit review.²²

ANALYSIS -- ISSUE 2

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

On August 25, 2024 appellant filed a timely request for reconsideration of an August 22, 2024 decision.²³ The Board finds, however, that he did not establish that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. In support of his reconsideration request, appellant submitted an August 25, 2024 statement in which he argued that pages were missing from the reports of Dr. Danushkodi and Dr. Tontz. However, there is no indication that the reports of Dr. Danushkodi and Dr. Tontz are missing pages and, as such, this argument does not have a reasonable color of validity.²⁴ Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant did not submit any new medical evidence. The underlying issue of the present case is medical in nature and he has not submitted pertinent new and relevant evidence in connection with his reconsideration request. Therefore, appellant is not entitled to

¹⁸ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁹ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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). *Id.* at Chapter 2.1602.4b.

²⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

²¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²² *See S.B.*, Docket No. 20-0708 (issued February 11, 2022); *C.N.*, Docket No. 17-1475 (issued May 23, 2018); *D.F.*, Docket No. 7-0694 (issued June 22, 2017); *Constance G. Mills*, 40 ECAB 317 (1988).

²³ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²⁴ *See supra* note 22.

further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 22 percent permanent impairment of the right lower extremity or greater than 11 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 23 and August 22 and 28, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 21, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board