



The Office authorized a right hip replacement, which was conducted on March 22, 2001. On November 13, 2001 appellant was granted a schedule award for 50 percent impairment of his lower right extremity.

On August 25, 2004 appellant filed a claim for wage-loss compensation, Form CA-7, for leave without pay taken from July 12 to August 25, 2004. On August 24, 2004 Dr. Richard Buch, who performed appellant's right hip replacement surgery in 2001, stated that appellant was totally disabled from May 11 through August 24, 2004. He did not provide a date at which time appellant could return to work. Appellant later filed claims for compensation for leave without pay taken from September 6 to 17 and November 12 to December 11, 2004.

The Office requested that appellant provide additional medical evidence establishing his disability for the claimed periods. Dr. Buch provided his treatment notes from 2004. On August 24, 2004 he stated that it was likely that appellant's left hip and right knee problems, which were causing a significant amount of pain, were precipitated by his accepted right hip injury. On November 24, 2004 Dr. Buch stated that appellant's right knee pain was partially caused by his left hip problem, which could be related to an earlier injury or the injury of the right hip.

By decision dated September 8, 2005, the Office denied appellant's claim for compensation. The Office found that the medical evidence was insufficient to establish that appellant's disability was caused by his August 27, 1999 employment injury.

On November 18, 2005 appellant requested reconsideration and filed a claim for leave without pay taken from December 12, 2004 to November 18, 2005. In a report dated November 1, 2005, Dr. Ronnie Shade, an orthopedic surgeon, opined that appellant had a left hip condition, which was a consequential injury of his accepted right hip injury. On November 8, 2005 Dr. Buch stated that appellant's right and left hips were both causing him pain. He opined that the left hip injury was a consequential injury of his right hip condition because appellant began to change the way he walked after his first hip injury and had not experienced any functional problems with the left hip prior to that point. Dr. Buch opined that appellant was disabled from work because there were likely few jobs that he could perform with two injured hips.

By decision dated February 21, 2006 the Office denied modification of its September 8, 2005 decision. The Office found that none of the new medical reports dealt with the claimed period of disability from July 12 to December 11, 2004. The Office did not address the claim for compensation from December 12, 2004 to November 18, 2005.

On September 7, 2006 Dr. Shade stated that appellant's current symptoms included progressive pain, joint stiffness and muscle spasms in both hips. He opined that appellant's left hip condition was a consequential injury of his accepted right hip condition. Dr. Shade also provided treatment notes from March and November 2006.

On November 6, 2006 appellant made a telephone call to the Office to verify the status of his claims. The Office advised that his claims for compensation had been denied and that he

needed to use his appeal rights if he wanted to challenge these decisions.<sup>1</sup> On December 11, 2006 appellant requested reconsideration on a form provided by the Office. He submitted no letter or documentation with his reconsideration request form.

By decision dated February 13, 2007, the Office denied appellant's request for reconsideration of the merits of his claim because he did not state the grounds for his reconsideration request or submit new and relevant arguments or evidence.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.<sup>2</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

When reviewing an Office decision denying merit review, the function of the Board is to determine whether the Office 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.<sup>5</sup>

### **ANALYSIS**

The Board finds that appellant met none of the regulatory requirements for a review of the merits of the Office's February 21, 2006 decision. On December 11, 2006 appellant requested reconsideration but failed to state the grounds for his request or submit any new evidence. The Board notes that the record contained new medical evidence from Dr. Shade, an orthopedic surgeon; however, this evidence is not relevant to the underlying issue in this case as it does not reference the periods of disability addressed in the Office's February 21, 2006 decision. As there was no relevant and pertinent new evidence for the Office to consider, appellant was not entitled to review under the third section of 10.606(b)(2).<sup>6</sup>

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<sup>1</sup> The Board notes that the Office has not adjudicated the claim for compensation that appellant submitted on November 18, 2005 for the period December 12, 2004 to November 18, 2005. This issue is not before the Board in the present appeal. *See* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> *Leslie M. Mahin*, 55 ECAB 311 (2004).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2)(iii).

The Board notes that appellant did not raise new arguments or present evidence that the Office erroneously applied or interpreted a specific point of law. Appellant also did not advance any relevant legal arguments not previously considered by the Office. He is thus not entitled to further review on the merits of his case under the first two subsections of section 10.606(b)(2).<sup>7</sup>

Because appellant did not meet any of the statutory requirements for a review of the merits of his claim, the Office properly denied his December 11, 2006 request for reconsideration of the merits of his claim.

**CONCLUSION**

The Board finds that the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 13, 2007 is affirmed.

Issued: December 11, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>7</sup> *Id.* at § 10.606(b)(2)(i) and (ii).