



Appellant submitted records from Dr. Dennis A. Carlini, a Board-certified orthopedic surgeon, dated December 23, 2002 to October 1, 2003. Dr. Carlini noted a history of injury and appellant's complaints of persistent low back pain and radiculopathy. He recommended physical therapy and a work-hardening program. Dr. Carlini noted that appellant continued to experience persistent low back pain and he suspected a significant facet joint problem. On September 3, 2003 he returned appellant to work at a desk job for four hours per day. On October 6, 2003 Dr. Carlini advised that appellant was permanently disabled from work for six weeks due to facet joint instability. A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 29, 2003 revealed no abnormalities. Appellant also submitted reports dated August 6 and 20, 2003 from Dr. Martin McLaren, a Board-certified anesthesiologist, who noted a history of injury and diagnosed lumbar facet syndrome and lumbar radiculopathy.

On December 8, 2003 the Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated January 20, 2004, Dr. Smith discussed appellant's work history. He opined that appellant's accepted condition of soft tissue strain of the back was resolved. Dr. Smith advised that he reached maximum medical improvement and could return to work in a regular-duty capacity.

On February 9, 2004 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Smith's report dated January 20, 2004 established no residuals of the work-related employment injury.

Appellant submitted reports dated October 27, 2003 to February 20, 2004 from Dr. William Tham, Board-certified in physical medicine and rehabilitation, who noted a history of injury and diagnosed lumbar spondylosis on the left side at L3, L4, L5 and S1 with mechanical lower back pain, lumbar radiculitis and facet arthropathy. Dr. Tham advised that appellant was totally disabled. On February 11, 2004 Dr. Carlini recommended testing to rule out conversion tendencies that may be magnifying or prolonging symptoms.

By decision dated March 10, 2004, the Office terminated appellant's wage-loss and medical benefits effective that day on the grounds that the weight of the medical evidence established that he had no continuing disability resulting from his accepted employment injury.

By letter dated March 25, 2004, appellant requested an oral hearing before an Office hearing representative. Appellant submitted a report from Dr. Tham dated July 1, 2004.

On August 10, 2004 the Office made a preliminary finding that appellant had been overpaid benefits in the amount of \$13,264.00. The Office noted that the overpayment occurred because appellant was incorrectly paid wage-loss compensation for the period March 21 to July 10, 2004, after his compensation benefits were terminated on March 10, 2004. The Office determined that appellant was at fault in creating the overpayment as he accepted payment which he knew or should have been expected to know was incorrect.

On September 7, 2004 appellant requested a hearing on the overpayment decision and submitted an overpayment questionnaire. The hearing was held on October 26, 2004. Appellant submitted chiropractor treatment notes dated July 8 to August 2, 2004. Also submitted were reports from Dr. Tham dated October 5 and 27, 2004.

By decision dated February 17, 2005, the hearing representative affirmed the March 10, 2004 decision which terminated appellant's wage-loss and medical benefits. The hearing representative further found that appellant received a \$13,264.00 overpayment of compensation from March 21 to July 10, 2004 for which he was without fault in creating.

On February 15, 2006 appellant, through his attorney, requested reconsideration and submitted additional medical evidence. Appellant referenced an attached statement of a physician which addressed the purported deficiency cited by the hearing representative's decision; however, there was no statement attached to the reconsideration request. He submitted a prescription note from Dr. Tham dated July 1, 2004, for a trial of chiropractic therapy. Also submitted were duplicative chiropractor notes dated July 13 and July 14, 2004.

By decision dated May 25, 2006, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Act,<sup>1</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,<sup>2</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

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 the Office without review of the merits of the claim.<sup>3</sup>

### **ANALYSIS**

Appellant's February 15, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law.

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> 20 C.F.R. § 10.608(b).

Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration referenced an attached statement of a physician which addressed the purported deficiency cited by the hearing representative; however, no such statement was attached to the reconsideration request. His letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered appellant submitted a July 1, 2004 note from Dr. Tham, who prescribed a trial of chiropractic therapy. However, this note is not relevant because it does not address the underlying issue of whether appellant continued to have residuals of his accepted condition of low back sprain/strain. Appellant did not otherwise provide any new and relevant evidence pertaining to the issue of whether he continued to have residuals of his accepted condition or whether the Office properly determined that an overpayment of compensation was created. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Also submitted were chiropractor notes dated July 13 and 14, 2004. However, this evidence was duplicative of evidence already contained in the record,<sup>4</sup> and was previously considered by the Office in its decision dated February 17, 2005 and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> Consequently, appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.<sup>6</sup>

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<sup>4</sup> 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>5</sup> 20 C.F.R. § 10.606(b).

<sup>6</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 25, 2006 is affirmed.

Issued: March 12, 2007  
Washington, DC

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

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

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