

The Board has duly considered the matter and finds that the case is not in posture for a decision. OWCP accepted the claim for right shoulder impingement, partial right rotator cuff tear and right rib cage contusion. On January 29, 2013 it denied appellant's claim for lumbar scoliosis and neurofibroma. OWCP found that these conditions were not causally related to the injury of March 22, 2012. In a separate decision, also dated January 29, 2013, it approved an attorney fee request. On March 5, 2013 appellant's attorney requested reconsideration. He specifically noted that he was requesting reconsideration of the "decision of the claims examiner dated January 29, 2013 that denied the claimant's injury to his neck and back." Counsel offered arguments and additional medical evidence to support the request. By decision dated June 28, 2013, OWCP denied appellant's request for reconsideration without conducting a merit review. It explained that two decisions were issued on January 29, 2013, a decision granting approval of an attorney's fee and a denial of the claim for scoliosis. OWCP found that, "[a]s you did not specify the decision for which reconsideration has been requested and you have not explained the basis for the request for reconsideration, the request for reconsideration is *prima facie* insufficient."

The Federal Employees' Compensation Act<sup>1</sup> provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.<sup>2</sup> Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before OWCP at the time of its final decision,<sup>3</sup> it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,<sup>4</sup> it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>5</sup> In the instant case, OWCP did not consider the argument and evidence submitted by counsel with his March 5, 2013 reconsideration request. This is underscored by OWCP's finding that counsel "did not specify the decision for which reconsideration has been requested and you have not explained the basis for the request for reconsideration." As noted, counsel's March 5, 2013 reconsideration request specifically noted that reconsideration was sought from OWCP's January 29, 2013 denial of the claim to appellant's neck and back. OWCP's June 28, 2013 decision also did not otherwise indicate a review of any of the new medical evidence submitted by appellant after the January 29, 2013 decision.

The Board, therefore, must set aside OWCP's June 28, 2013 decision and remand the case for OWCP to fully consider appellant's March 5, 2013 reconsideration request as well as the evidence which was properly submitted by appellant subsequent to the January 29, 2013 decision denying appellant's claim for an injury to his neck and back. Following such further development as OWCP deems necessary, it shall issue an appropriate decision.

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<sup>1</sup> 5 U.S.C. §§ 8101 *et seq.*

<sup>2</sup> *Id.* at § 8124(a)(2); 20 C.F.R. § 10.125.

<sup>3</sup> *See id.* at § 501.2(c).

<sup>4</sup> *Id.* at § 501.6(c).

<sup>5</sup> *William A. Couch*, 41 ECAB 548 (1990).

**IT IS HEREBY ORDERED THAT** the June 28, 2013 decision is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: February 24, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board