United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
	)	**Docket No. 11-188**
and	)	**Issued: October 26, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VANCOUVER (PORTLAND) VETERANS ADMINISTRATION MEDICAL CENTER, Vancouver, WA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2010 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) July 30, 2010 nonmerit decision denying his request for reconsideration with respect to the denial of his claim for a recurrence of total disability. Because more than 180 days have elapsed between the most recent merit decision dated March 18, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim for total disability pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3. The Board, however, has jurisdiction to review the merits of OWCP's September 1, 2010 merit decision which denied his consequential injury claim pursuant to FECA and 20 C.F.R. §§ 501.2(c) and 501.3.

[1] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim for a recurrence of total disability commencing April 27, 2009 pursuant to 5 U.S.C. § 8128(a); and (2) whether he sustained a back condition as a consequence of his accepted employment injury.

On appeal, appellant's attorney contends that appellant submitted new legal arguments and medical evidence to OWCP that were sufficient to establish his claims.

FACTUAL HISTORY

On June 12, 2008 appellant, then a 53-year-old electronics mechanic, filed an occupational disease claim alleging that he sustained a bilateral knee injury as a result of working on his knees while repairing beds, washing machines and dryers. OWCP accepted his claim for bilateral leg and knee osteoarthritis and authorized total left and right knee replacement surgery.

In a January 9, 2009 medical report, Dr. Glenn M. Garro, an attending Board-certified internist, stated that appellant's knee problems, most especially his right knee, were now causing him discomfort in his back which rendered him unable to perform light-duty work.

On February 16, 2009 Dr. Matthew J. Gambee, a Board-certified physiatrist, requested that OWCP authorize a lumbar spine magnetic resonance imaging (MRI) scan.

By letter dated February 27, 2009, OWCP denied appellant's request for treatment of a lumbar spine condition, noting that it had not accepted such a condition as work related. It requested that he submit a medical report from a physician which described the mechanism by which a diagnosed lumbar condition was caused by his work activities or accepted bilateral knee condition supported by medical rationale.

In a March 10, 2009 report, Dr. T. David Hayes, an orthopedic surgeon, stated that appellant's back pain could be related to his employment.

In a March 19, 2009 report, Dr. Edward Kim, a physiatrist, noted that since appellant's November 2008 left knee replacement surgery, he had worsening back pain. He listed his findings on physical examination and advised that appellant had left lumbar radiculitis. It appeared that he had preexisting lumbar chronic pain which was recently exacerbated by his accepted left knee surgery due to leg length discrepancy. Dr. Kim concluded that appellant could not return to work unless it involved desk work due to his right knee pain for which he was awaiting arthroscopic surgery. He, however, stated that appellant could not sit for a prolonged period due to his back and radicular pain.

In an April 13, 2009 report, Dr. Gambee noted that appellant had a 20-year history of low back pain. He stated that typically, knee pain did not cause back pain. Dr. Gambee advised that there was no relationship between appellant's 20-year history of back pain and any work-related condition.

In an April 15, 2009 report, Dr. Hayes listed his physical examination findings and reviewed clinical findings and photographs related to appellant's right knee. He advised that appellant could return to sedentary work in one week. In an April 28, 2009 report, Dr. Hayes advised that appellant had a tear of the medial cartilage or meniscus and osteoarthritis of the right knee. He was unable to perform his regular work duties. Appellant stated that his knee was too painful to work. Dr. Hayes listed his physical restrictions. In a May 1, 2009 report, Dr. Hayes stated that appellant had not been released from his care.

In reports dated April 21 and 22, 2009, Dr. Garo requested that appellant be excused from work through May 22, 2009 due to knee issues that were associated with his chronic back pain for which he was being evaluated. The time off would also give him ample time to follow-up with specialists regarding his recent tests results and treatment.

On April 27, 2009 appellant accepted the employing establishment's April 22, 2009 offer for a temporary limited-duty position which was based on Dr. Hayes' April 15, 2009 findings. He stopped work on April 28, 2009.

Appellant filed claims for compensation (Form CA-7) for the period April 27 through June 5, 2009.

In a May 5, 2009 report, a physical therapist, addressed the treatment of appellant's right knee and back pain.

In a May 29, 2009 report, Dr. Todd A. Borus, a Board-certified orthopedic surgeon, noted that appellant was recovering from left total knee replacement surgery. He had severe degenerative arthritis in the right knee for which he was scheduled to undergo total knee arthroplasty in July 2009. Dr. Borus advised that appellant should not return to work until approximately three months after his right knee surgery based on the severity of arthritis in his right knee.

In a June 16, 2009 decision, OWCP denied appellant's claim for a consequential back condition, finding that the evidence failed to establish that his claimed condition was casually related to his accepted employment-related bilateral knee injury and resultant surgeries.

Also, on June 16, 2009 appellant filed a Form CA-7 for the period June 7 to 19, 2009.

By letter dated June 17, 2009, OWCP advised appellant that the evidence of record was insufficient to establish a worsening of his accepted condition on or after April 28, 2009. It addressed the medical evidence needed to establish his claim for total disability compensation.

In reports dated May 20 and June 8 and 16, 2009, Dr. Borus reiterated his prior diagnosis of severe right knee degenerative arthritis and opinion that appellant could not return to work until approximately three months after his July 2009 right total knee replacement surgery due to the severity of arthritis in his right knee. In a July 14, 2009 note, he discussed the upcoming right knee surgery with appellant.

On July 1 and 12, 2009 appellant filed CA-7 forms for the period June 30, 2008 to July 17, 2009.

In a June 30, 2009 progress report, Jenifer Giger, a registered nurse, noted appellant's upcoming July 20, 2009 right knee surgery. His anticipated date of maximum medical improvement was three months post surgery. In a July 2, 2009 note, Kathy Stefan, a registered nurse practitioner, recommended diagnostic myocardial testing prior to appellant's surgery in light of his low exercise capacity and comosbidties.

In a July 24, 2009 decision, OWCP denied appellant's claim for compensation for the period commencing April 27, 2009. It found that the medical evidence was insufficient to establish that his disability during the claimed period was causally related to his accepted employment injury.

On July 27, 2009 appellant requested an oral hearing regarding the July 24, 2009 decision.

On July 29, 2009 appellant filed a Form CA-7 for the period July 20 through 31, 2009.

In a June 30 2009 report, Ms. Stefan noted appellant's upcoming right total knee arthroplasty and medical problems which included diabetes mellitus Type II, hypertension and dyslipidemia. She advised that his overall risk for a perioperative cardiovascular event was low based on normal nuclear stress test results.

A July 27, 2009 report from a physical therapist addressed the treatment of appellant's right knee condition.

In a June 19, 2009 report, Dr. Borus advised that appellant had a right lateral ankle sprain. He was still unable to work until after his scheduled right knee surgery. In a July 28, 2009 report, Dr. Borus listed his findings on physical and x-ray examination of appellant's right knee following his July 20, 2009 surgery. He was having more problems with his low back. Dr. Borus anticipated that appellant would be off work for two months. He could then return to sedentary work for two months.

In a March 18, 2010 decision, an OWCP hearing representative affirmed the denial of appellant's claim for a recurrence of total disability. She found that he failed to submit any rationalized medical evidence to establish that his claimed disability on or after April 27, 2009 was causally related to his accepted employment injury.

By letters dated June 11 and 15, 2010, appellant, through his attorney, requested reconsideration of the denial of his consequential injury claim.

By letter dated July 22, 2010, appellant, through counsel, requested reconsideration of the denial of his recurrence of disability claim.

Reports dated July 27, September 2 and October 9, 2009 from appellant's physical therapists addressed the treatment of his right knee and back pain.

In reports dated June 30, 2009 and April 13, 2010, Dr. Garo noted appellant's symptoms and medications. He advised that appellant had uncontrolled and non-insulin dependent adult onset Type II diabetes, unspecified osteoarthritis, and lumbar and cervical radiculitis. In the

April 13, 2010 report, Dr. Garo advised that appellant was unable to perform the duties of an offered position. In an April 13, 2010 work capacity evaluation (Form OWCP-5c), he stated that appellant was unable to perform his regular work duties due to cervical and lumbar problems and listed his physical restrictions.

In reports dated April 13 and June 18, 2010 report, Dr. Borus report listed his findings on physical and x-ray examination. He advised that knee conditions and resulting surgeries aggravated his preexisting disc herniation. In a June 18, 2010 Form OWCP-5c, Dr. Borus advised that appellant was unable to perform his regular work duties, but he could work eight hours per day with restrictions.

Dr. Hoang N. Le, a Board-certified neurosurgeon, reported on April 6, 2010 that it was unknown as to whether appellant's knee surgery aggravated his lower back condition. It was probably more likely that his disc herniation at L4-L5 was a result of his fusion at L5-S1. It was unknown to Dr. Le as to how much of appellant's leg discrepancy contributed to his lumbar condition. Dr. Le advised that given appellant's persistent hand weakness from his cervical disc herniation, appellant was unable to return to any employment involving the use of his hand. Also, he could not return to work for two to three months until his right L4-5 disc herniation for which he was undergoing treatment could be rectified surgically. In an April 9, 2010 report, Dr. Le reviewed the employing establishment's March 17, 2010 modified job offer and advised that appellant was not physically capable of performing the offered position.

In an April 14, 2010 Form OWCP-5c, Dr. Kim advised that appellant was totally disabled for work due to his chronic low back pain with a pinched nerve and listed his physical restrictions. In a June 18, 2010 report, he noted the worsening of appellant's low back and right knee pain since his authorized left knee arthroplasty. Dr. Kim advised that a surgical procedure could cause biomechanical mismatch and dysfunction resulting in aggravation or worsening of lower back pain and problems. He stated that appellant's right knee condition was also worsened by the added stress of the left knee surgery and increased use after surgery. Dr. Kim concluded that his knee problems and altered gait contributed to his subsequent back problems.

Treatment notes and a report from appellant's physical therapists addressed the treatment of his right knee and back pain from July 29 through September 2, 2009.

In a December 22, 2009 report, Dr. Anthony S. Wei, a Board-certified orthopedic surgeon, addressed a treatment plan following appellant's left shoulder arthroscopic rotator cuff repair, biceps tenotomy and decompression. In a June 9, 2010 report, he opined that the arthritic symptoms of appellant's accepted right knee injury caused his current left shoulder problems. Dr. Wei recommended revision arthroscopic rotator cuff repair.

On May 4, 2010 appellant filed CA-7 forms for the period April 12 through May 9, 2010.

On May 26, 2010 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Richard G. McCollum, a Board-certified orthopedic surgeon, for a second opinion regarding his claimed consequential back injury. In a June 18, 2010 report, Dr. McCollum obtained a history of the accepted employment injury and appellant's medical and socioeconomic background. His current symptoms included right knee and back pain.

Dr. McCollum reviewed Dr. Kim's March 19, 2009 report and stated that based on his surgical experience, any length discrepancy would be very unlikely to be a reason for appellant's back pain. He listed his findings on physical examination and diagnosed bilateral knee osteoarthritis. Dr. McCollum could not account for appellant's right knee symptoms based on his normal physical examination findings. He concluded that appellant was permanently disabled from performing his regular work duties as an electronics mechanic due to his accepted injury. He could not set forth his physical restrictions as he was only a couple of months post back surgery.

On July 8, 2010 OWCP found a conflict in medical opinion between Dr. Kim and Dr. McCollum as to whether appellant's current back condition was a consequence of his accepted bilateral knee injury. On July 13, 2010 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Stephen J. Thomas, a Board-certified orthopedic surgeon, for an impartial medical examination.

A June 30, 2010 electromyogram report from Dr. Matthew J. Gambee, a Board-certified physiatrist, indicated that appellant had significant residual C8 radiculopathy of the right upper extremity, moderate to severe carpal tunnel syndrome of the right hand and cubital tunnel neuropathy of the right elbow.

In a July 30, 2010 decision, OWCP denied appellant's request for reconsideration of his recurrence of disability claim without reviewing the merits of the case. It found that the evidence submitted was irrelevant and, thus, insufficient to warrant a merit review of his claim.

In an August 6, 2010 report, Dr. Thomas obtained a history of the accepted employment injury and appellant's medical treatment, family and socioeconomic background. The doctor noted in detail his findings on physical examination. Dr. McCollum reviewed cervical x-rays which showed a C6-7 fusion done with bone and a fusion and an anterior plate at C7-Tl. Lumbar spine x-rays showed a narrow L5-S1 disc space and wide laminectomy defect at L5-S1. No bilateral knee x-rays were available for review. Dr. Thomas diagnosed, among other things, osteoarthritis status post total knee replacements bilaterally and degenerative arthritis of the lumbar spine status post a 1988 L5-S1 fusion and April 2010 decompressive laminectomy. He advised that the diagnosed degenerative arthritis back condition and resultant surgeries were not caused, aggravated, precipitated or accelerated by his accepted bilateral knee injury. Appellant's described lumbar symptoms were consistent with degenerative disc disease. Dr. Thomas did not have any documentation to support his contention that his left leg was three-fourths inches longer than his right leg. He stated that both legs were currently of equal length. Dr. Thomas opined that in all medical probability, appellant's lumbar symptoms were a continuation of his preexisting disease. There was no medical evidence that his knee surgery aggravated his back. Rather, this was a continuation of his underlying disease for which he underwent major surgery in late 1987 and 1988 and large laminectomy defect. Dr. Thomas concluded that appellant had chronic back pain over the years and it gradually worsened which was consistent with his underlying disease.

In a decision dated September 1, 2010, OWCP denied modification of its finding that appellant did not sustain a consequential back condition causally related to his accepted injury. It found that Dr. Thomas' medical opinion was entitled to special weight accorded an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

To require OWCP to reopen a case for merit review under section 8128 of the FECA,[2] OWCP's regulation provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[3] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 1

Appellant's July 22, 2010 request for reconsideration of the March 18, 2010 OWCP decision denying his recurrence of disability claim neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Garo's April 13, 2010 report and Form OWCP-5c found that appellant was totally disabled due to his cervical and lumbar problems. His June 30, 2009 and April 13, 2010 reports found that appellant had uncontrolled and noninsulin dependent adult onset Type II diabetes, unspecified osteoarthritis and lumbar and cervical radiculitis. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[5] Dr. Garo did not provide an opinion addressing whether appellant's total disability commencing April 27, 2009 was causally related to the accepted bilateral leg and knee osteoarthritis and authorized bilateral knee replacement surgeries. The Board finds, therefore, that Dr. Garo's reports are not relevant and are insufficient to warrant reopening the case for a merit review.

Similarly, the medical reports from Dr. Boris, Dr. Le and Dr. Gambee are insufficient to warrant a merit review of appellant's recurrence claim. Dr. Boris' July 20, 2009 report and June 18, 2010 Form OWCP-5c are insufficient to warrant a merit review of appellant's recurrence claim. He advised that the accepted conditions and resultant surgeries aggravated his preexisting disc herniation. Dr. Boris found that appellant was totally disabled for his regular work duties, but he could work eight hours per day with restrictions. Dr. Le's March 18 and April 9, 2010 reports found that appellant could not return to work for two to three months until

[2] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(1)-(2).

[4] *Id.* at § 10.607(a).

[5] *D. Wayne Avila*, 57 ECAB 642 (2006).

his right L4-5 disc herniation was treated surgically. Dr. Gambee's June 30, 2010 diagnostic test results addressed appellant's cervical, and right hand and elbow conditions. None of the physicians provided a medical opinion addressing the relevant issue of whether appellant's total disability commencing April 27, 2009 was due to the accepted injuries and resultant bilateral knee surgeries and, thus, the Board finds that their reports are insufficient to reopen his claim for further merit review.[6]

Dr. Wei's December 22, 2009 report and the February 5, 2010 operative report predate the claimed recurrence of disability in 2009 and, thus, are not relevant to the issue of whether appellant sustained a recurrence of disability. The Board finds that this evidence is insufficient to reopen appellant's claim for further merit review.[7]

The treatment notes and reports from appellant's physical therapists are of no probative medical value as physical therapists are not considered physicians as defined under FECA and, are not competent to render a medical opinion.[8] As the underlying issue is medical in nature, the physical therapy reports do not constitute relevant evidence.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his July 22, 2010 request for reconsideration.[9]

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[10] Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable

[6] *Id.*

[7] *Id.*

[8] *See* U.S.C. § 8101(2) (defining the term physician); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[9] *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

[10] *Albert F. Ranieri*, 55 ECAB 598 (2004).

so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[11]

A claimant bears the burden of proof to establish a claim for a consequential injury.[12] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[13]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[14] In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[15]

ANALYSIS -- ISSUE 2

Appellant's physician, Dr. Kim, opined that appellant's preexisting chronic lumbar pain was exacerbated by his authorized left knee surgery due to leg length discrepancy. Dr. McCollum, an OWCP referral physician, opined that appellant's back pain was not caused by left leg length discrepancy. OWCP determined that a conflict of medical opinion arose as to whether the authorized left knee surgery contributed to appellant's back condition. It properly referred appellant to Dr. Wainen, a Board-certified orthopedic surgeon, selected as the impartial medical examiner. It properly referred appellant to Dr. Thomas, a Board-certified orthopedic surgeon, selected as the impartial medical examiner.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Thomas. In an August 6, 2010 report, Dr. Thomas examined appellant, reviewed the medical evidence of record and concluded that his degenerative arthritic back condition and resultant back surgeries were not caused, aggravated, precipitated or accelerated by his accepted bilateral knee injury. On physical examination, he reported essentially normal findings with the exception of appellant's inability to walk on his toes. Dr. Thomas found decreased range of motion of the lumbar spine and hip with pain in the right knee and decrease sensation below the knees to light touch on both legs. He also found that straight leg raising was 70 degrees bilaterally with a negative dorsiflexion test and straight leg raising sitting was 90 degrees.

[11] A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009).

[13] *Charles W. Downey*, 54 ECAB 421 (2003).

[14] 5 U.S.C. § 8123(a); *see S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[15] *B.P.*, Docket No. 08-1457 (issued February 2, 2009); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

Dr. Thomas noted that appellant was unable to perform a sit up. He measured the proximal of the patella which was had a 4-inch circumference and was 18½ inches bilaterally and the calf circumference was 15 inches bilaterally. Dr. Thomas stated that leg lengths were measured twice from the anterosuperior iliac spine to the umbilicus and were found to be 37 inches bilaterally. Appellant had slight pain to palpation in the midline at L5-S1, but no pain over the paraspinal muscles, sacroiliac joint or sciatic outlet. On examination of the bilateral knees, Dr. Thomas reported essentially normal findings with the exception of decreased range of motion, pain to palpation of the right knee along the medial and lateral distal femur and increased warmth to palpation on the right knee compared to the left knee. He advised that the results of diagnostic testing revealed a C6-7 fusion done with bone, a fusion and an anterior plate at C7-Tl, a narrow L5-S1 disc space and wide laminectomy defect at L5-S1. Dr. Thomas opined that appellant had osteoarthritis status post total knee replacements bilaterally and degenerative arthritis of the lumbar spine status post a 1988 L5-S1 fusion and April 2010 decompressive laminectomy. He stated that his lumbar symptoms were consistent with degenerative disc disease. Dr. Thomas further stated that there was no documentation to support appellant's contention that his left leg was three-fourths inches longer than his right leg. He advised that both legs were currently of equal length. Dr. Thomas opined that appellant's lumbar symptoms were a continuation of his preexisting disc disease. He explained that there was no medical evidence establishing that his knee surgery aggravated his preexisting back condition. Dr. Thomas concluded that appellant's back condition was unrelated to the accepted conditions. Instead, he was experiencing a gradual worsening of his underlying disease for which he underwent surgery in 1987 and 1988.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Thomas. A reasoned opinion from a referee examiner is entitled to special weight.[16] The Board finds that Dr. Thomas provided a well-rationalized opinion based on a complete background, his review of the statement of accepted facts and the medical record and his examination findings. Dr. Thomas' opinion, that appellant did not sustain a back condition due to his accepted employment injuries, is entitled to special weight and represents the weight of the evidence.[17] Appellant did not submit any additional medical evidence in support of his consequential claim following Dr. Thomas' medical opinion.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim for total disability commencing April 27, 2009 pursuant to 5 U.S.C. § 8128(a). The Board further finds that appellant failed to establish that he sustained a consequential back condition causally related to his accepted employment injury.

[16] *Id.*

[17] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 1 and July 30, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 26, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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