

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

M.K., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
BORDER PATROL, Cotulla, TX, Employer**

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**Docket No. 11-1455
Issued: January 4, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2011 appellant filed a timely appeal from a December 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) and an April 15, 2011 OWCP decision denying further review of the merits of the claim. 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 established a recurrence of his accepted medical condition on August 26, 2010; and (2) whether OWCP properly denied appellant's application for reconsideration without review of the merits of the claim for compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 14, 2010 appellant, then a 25-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2001 he injured his low back during a training exercise. The claim noted that appellant did not lose time from work. On July 16, 2001 OWCP accepted the claim for a lumbosacral strain.

Appellant submitted a notice of recurrence (Form CA-2a) dated September 1, 2010. He indicated that on August 26, 2010 he was sitting at his desk when he felt pain and a burning sensation in his lower back. On the claim form appellant checked a box “Medical Treatment Only.”

In a November 17, 2010 letter, OWCP requested appellant to submit additional evidence with respect to his claim. On December 23, 2010 appellant submitted a September 7, 2001 report from Dr. Robert Maywood, an orthopedic surgeon, who provided a history, results on examination, and stated that appellant did not have a permanent impairment.

By decision dated December 27, 2010, OWCP denied the claim for a recurrence of a medical condition. It noted that appellant had not submitted any current medical evidence.

On January 4, 2011 appellant requested reconsideration of his claim. He did not submit any additional evidence or argument.

In a decision dated April 15, 2011, OWCP found the application for reconsideration was insufficient to warrant further merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined in OWCP’s procedure manual as “the documented need for further treatment of the accepted condition when there is no work stoppage.”² When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the claimant’s current condition and the previous work injury.³

Rationalized medical opinion is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the employment injury. The opinion of the physician must be based on a complete and accurate factual and medical history, supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the employment injury.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

³ *Id.*, Chapter 2.1500.5(b) (September 2003).

⁴ *Helen K. Hunt*, 50 ECAB 279 (1999).

care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

Appellant filed a claim seeking compensation for medical treatment as of August 26, 2010 for a recurrence of his back injury. As noted, appellant has the burden to submit a narrative medical opinion that has a description of objective findings and addressing causal relationship between the current medical treatment and the accepted employment injury.

The only medical evidence submitted, however, was a 2001 report from Dr. Maywood. This is not sufficient to meet appellant's burden of proof as it does not provide current medical findings with respect to appellant's back condition on August 26, 2010 or provide any opinion on causal relationship with the employment injury.

The Board finds that appellant did not meet his burden of proof to establish a recurrence of a medical condition on August 26, 2010. On appeal, appellant stated that he submitted all medical evidence that was requested with a return receipt. There is no medical evidence of record submitted prior to the December 27, 2010 decision other than the 2001 report from Dr. Maywood. Any evidence submitted for the first time to the Board on appeal cannot be considered as it was not before OWCP at the time of the final decision.⁶ 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.

LEGAL PRECEDENT -- ISSUE 2

FECA provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district OWCP. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁷

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁶ 20 C.F.R. § 501.2(c)(1).

⁷ *Id.* at § 10.605 (1999).

⁸ *Id.* at § 10.606.

A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of his claim for compensation on January 4, 2011. The record does not, however, contain any argument or evidence submitted with the application for reconsideration. The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered by OWCP. Since appellant did not meet one of these standards, OWCP properly denied the application for reconsideration without merit review of the claim. As noted above, appellant has one year from the date of this decision to timely file an application for reconsideration with OWCP and submit additional evidence or argument.

CONCLUSION

The Board finds that appellant did not establish a recurrence of a medical condition on August 26, 2010. The Board further finds that OWCP properly denied the application for reconsideration without merit review of the claim.

⁹ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 15, 2011 and December 27, 2010 are affirmed.

Issued: January 4, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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