

Appellant submitted a request for reconsideration dated May 8, 2009, received by OWCP on May 12, 2009, and a medical report from Dr. Robert Macht, a Board-certified surgeon, who opined that appellant's current radiculopathy and herniated disc condition was causally related to the accepted injury. He also submitted reports of magnetic resonance imaging (MRI) scans dated November 7, 2006 and May 27, 2008, and several work capacity evaluations reflecting current work restrictions.

On August 12, 2010 appellant, through his representative, again requested reconsideration.¹ Counsel contended that an enclosed report from Dr. Neil Novin, a Board-certified surgeon, was sufficient to establish a causal relationship between appellant's current condition and his accepted injury.

In the July 15, 2010 report, Dr. Novin provided a history of injury and treatment, noting that he had reviewed the entire medical record and interviewed appellant. He opined to a reasonable degree of medical certainty that appellant's current disc herniation and January 11, 2008 surgery were a direct result of the July 29, 2000 injury. Dr. Novin explained that appellant's original neck condition had progressed to the extent that surgery had been required.

In its April 21, 2011 decision, OWCP denied modification of its prior decision. Although it listed the medical evidence it had received, it did not reference nor discuss Dr. Novin's July 15, 2010 report.

The Board finds that OWCP failed to consider all medical evidence of record before making its determination. As the Board's jurisdiction of a case is limited to reviewing that evidence which was before OWCP at the time of its final decision,² it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.³ In its final decision, OWCP made no reference to Dr. Novin's July 15, 2010 report. Because it does not appear that OWCP considered this evidence in reaching its April 21, 2011 decision, the Board cannot review such evidence for the first time on appeal.⁴

The Board finds that this case is not in posture for a decision. On remand, OWCP should review all of the evidence of record, including Dr. Novin's July 15, 2010 report. Following such further development as it deems necessary, it shall issue an appropriate decision.

¹ In his request for reconsideration, appellant's counsel referenced an August 13, 2009 OWCP decision. The record in xxxxxx385 does not contain a decision of that date.

² 20 C.F.R. § 501.2(c).

³ See *William A. Couch*, 41 ECAB 548 (1990).

⁴ See *supra* note 2.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 21, 2011 decision be set aside, and the case is remanded for further development consistent with this order.

Issued: January 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board