



lumbar strain. Appellant did not immediately stop work but received continuation of pay from October 1 to November 14, 2003.

From October 8 to December 9, 2003, appellant was treated by Dr. Harold G. Weems, Jr., a Board-certified orthopedic surgeon, for persistent low back pain radiating into his leg. Dr. Weems noted appellant's history was significant for a herniated disc diagnosed in 1983. He diagnosed scoliosis of the lumbar spine with resulting degeneration and recommended physical therapy and indicated that appellant should stay off work. Appellant submitted physical therapy notes from November 2003. He also submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated December 23, 2003 that revealed left-sided lumbar scoliosis with diffuse degenerative disc disease and generalized disc bulging at L3-4, L4-5 and L5-S1.

On December 1, 2003 appellant filed a Form CA-7, claim for compensation, for the period beginning November 17, 2003.

On December 9, 2003 OWCP requested that appellant submit additional information regarding his claim for compensation. It requested medical evidence to establish that he was totally disabled due to his accepted back condition for the period claimed.

By decision dated January 7, 2004, OWCP denied appellant's claim for compensation beginning November 17, 2003 on the grounds that the medical evidence did not establish that his total disability was due to his accepted work injury.

On February 25, 2004 appellant requested reconsideration. He submitted reports from Dr. Weems dated January 6 to December 9, 2003. In a January 15, 2004 report, Dr. James S. Grant, an internist, treated appellant for a chronic back condition. He noted the MRI scan of the lumbar spine revealed herniated disc at L4-5, L3-4 and L5-S1 which suggested traumatic disc bulging most likely associated with his work-related injury. Dr Grant indicated that returning appellant to work could cause further injury and recommended more aggressive therapeutic intervention. In a decision dated May 21, 2004, OWCP denied modification of the January 7, 2004 decision.

On October 6, 2004 appellant requested reconsideration. He submitted September 15, 2004 reports from Dr. Weems who treated him for chronic back pain. In reports dated June 28 to August 25, 2004, Dr. Grant treated appellant for persistent low back discomfort resulting from a work injury. He diagnosed acute lumbar facet strain and herniated nucleus pulposus. Dr. Grant noted conservative treatment had failed and that appellant's condition was progressive with paresthesias, pain and numbness.

By decision dated November 3, 2004, OWCP denied modification of the prior decision.

On May 14, 2005 appellant requested reconsideration. He submitted reports from Dr. Weems dated October 8, 2003 and September 15, 2004 and an MRI scan dated December 23, 2003, previously of record. In reports dated May 13 and August 15, 2005, Dr. Grant diagnosed lumbar stenosis, neurogenic claudication, lumbar radiculopathy, acute lumbar injury and possible herniated discs at L3-4, L4-5 and L5-S1 secondary to the injury. He returned appellant to limited-duty work. Appellant submitted reports from Dr. Jonathan White, a Board-certified

neurosurgeon, dated July 26, 2005 and February 8, 2006, who treated appellant for back pain. Dr. White listed a history that in 2002 appellant experienced a sudden onset of back pain at work and his symptoms were exacerbated over the ensuing weeks to include radiating leg pain. He diagnosed lumbar spinal stenosis, neurogenic claudication and lumbar radiculopathy and recommended epidural steroid injections. Dr. White returned appellant to limited duty.

By decision dated December 19, 2006, OWCP denied modification of the prior decisions.

On December 12, 2007 appellant requested reconsideration. He submitted reports from Dr. Weems dated December 9, 2003 to September 15, 2004, previously of record. Also submitted were reports from Dr. White dated December 3, 2007 and October 27, 2009, who diagnosed lumbar radiculopathy, herniated disc and spinal stenosis and recommended light-duty work. Dr. White opined that based on the clinical history it was more likely than not that appellant's problems began in September 2003 after heavy lifting at work. He noted that prior to this time appellant had not had back pain or radiculopathy since the 1980's. Appellant submitted letters from his congressional representative inquiring as to the status of the claim.

By decision dated February 23, 2010, OWCP denied modification of the prior decision.

On February 18, 2011 appellant requested reconsideration. He contended that Dr. Weems provided an incorrect diagnosis of lumbar sprain and that Drs. Grant and White properly diagnosed a herniated disc based on an MRI scan of the lumbar spine. Appellant noted that due to the severity of his injury, he warranted time off from work which was supported by Drs. Grant and White. He noted receiving continuation of pay which supported the seriousness of his injury and advised that the medical evidence of record established that he sustained a work-related herniated disc. Appellant indicated that he would submit additional evidence in support of his claim, but no evidence was received.

In a March 4, 2011 decision, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>2</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, 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:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

---

<sup>2</sup> *Id.* at § 8128(a).

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>3</sup>

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 OWCP without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

In its February 23, 2010, merit decision, OWCP denied appellant’s claim for compensation for total disability for the period beginning November 17, 2003 on the grounds that the evidence did not establish that his total disability was due to his accepted work injury. On March 4, 2011 it denied his February 18, 2011 reconsideration request, without a merit review and he appealed this decision to the Board. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim.

In his February 18, 2011 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant asserted that Dr. Weems incorrectly diagnosed lumbar sprain and that Drs. Grant and White properly diagnosed herniated disc based on a lumbar MRI scan. He stated that his injury necessitated time off from work which was supported by Drs. Grant and White as well as his being granted continuation of pay. However, appellant’s general statements and allegations about interpretation of the medical evidence do not show that OWCP erroneously applied or interpreted a point of law nor do they advance a point of law or fact not previously considered by OWCP. He also cites no authority for his contention that receipt of continuation of pay for a particular period supports entitlement to wage-loss compensation for a later period. 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).

The underlying issue in this case, whether appellant had disability during the period beginning November 17, 2003 causally related to his accepted work injury, is a medical issue which must be addressed by relevant medical evidence.<sup>5</sup> A claimant may be entitled to a merit review by submitting new and relevant evidence, but he did not submit any new and relevant medical evidence in this case.

The Board accordingly 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 evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

---

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

On appeal, appellant reiterated his assertion that he submitted sufficient evidence to establish that he was totally disabled for the period in question but OWCP disregarded this evidence. The Board notes, however, that it only has jurisdiction over whether OWCP properly denied a merit review of the claim. As explained, appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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