

FACTUAL HISTORY

This case has previously been before the Board on appeal. On June 29, 1987 appellant, then a 43-year-old preventative maintenance worker, sustained a thigh and groin injury when an elevator closed on his left leg. OWCP accepted his claim for muscle ligament strain and bruise and avascular necrosis of the left femoral head. Appellant underwent surgery on January 12, 1988 and a total hip replacement on October 20, 1993. By decision dated February 15, 1995, OWCP determined that his actual earnings as a roofer fairly and reasonably represented his wage-earning capacity. Appellant filed a claim for recurrence of disability which OWCP denied. In an order dated October 7, 2005, the Board remanded the case for OWCP to adjudicate the issue of modification of the loss of wage-earning capacity decision.² On remand OWCP denied modification of the loss of wage-earning capacity determination and appellant appealed this decision to the Board. The Board determined on August 11, 2006 that he had not established that the loss of wage-earning capacity decision should be modified.³ Following the Board's August 11, 2006 decision, appellant submitted medical evidence and requested reconsideration. By decision dated December 3, 2008, OWCP declined to reopen his claim for consideration of the merits. The Board reviewed this decision on December 9, 2009 and found that OWCP properly declined to reopen appellant's claim for consideration of the merits.⁴ The facts and circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

Appellant filed a notice of recurrence of disability on March 29, 2010 and alleged that he had sustained a recurrence of disability due to his 1987 employment injury. Dr. Nader Hebela, a Board-certified orthopedic surgeon, completed a report on February 25, 2010 discussing appellant's left-sided groin pain. He noted that appellant described pain on the inside of his left groin with range of motion of his left hip. Dr. Hebela reviewed appellant's January 5, 2010 magnetic resonance imaging scan of the lumbar spine which demonstrated lumbar spondylosis and L4-5 left-sided laminectomy defect and possible disc bulge between L3-4 with left-sided nerve root compression. He opined that the majority of appellant's groin pain was due to wear within the polyethylene causing synovitis. On March 17, 2010 appellant's attending physician, Dr. Craig Israelite, a Board-certified orthopedic surgeon of professorial rank, opined that appellant required a second hip replacement. OWCP authorized revision of the left hip replacement on August 12, 2010.

Appellant filed a claim for compensation on August 30, 2010 requesting wage-loss compensation from December 21, 2003. He noted that he was receiving retirement benefits from the Office of Personnel Management (OPM) in the amount of \$1,446.00 a month.

On December 1, 2010 OWCP requested additional information from Dr. Israelite regarding appellant's period of disability from the date of surgery on April 29, 2010 to his return to presurgery condition. Dr. Israelite responded on December 21, 2010 and stated that appellant

² *Order Remanding Case*, Docket No. 05-807 (issued October 7, 2005).

³ Docket No. 06-459 (issued August 11, 2006).

⁴ Docket No. 09-995 (issued December 9, 2009).

had progressed well, but was disabled from employment as he was unable to stand or walk significant distances.

OWCP's medical adviser reviewed appellant's claim for compensation on February 21, 2011 and stated that as appellant underwent hip surgery in April 2010 and received permanent restrictions on December 21, 2010 his period of total disability was eight months. The medical adviser further stated that appellant's osteoarthritis of the left hip should be added to the list of accepted conditions.

By decision dated February 22, 2011, OWCP updated appellant's list of accepted conditions to include osteoporosis, sprain of the knee, lateral collateral ligament on the left, contusion of the left hip and thigh and localized primary osteoarthritis of the left lower leg.

By decision dated March 23, 2011, OWCP determined that appellant was not entitled to compensation before April 29, 2010 or after December 21, 2010 as he had not established that the original loss of wage-earning capacity determination was in error. In a letter dated March 23, 2011, it notified him that he was entitled to compensation from April 29 to December 21, 2010 in the amount of \$23,195.25.

Appellant elected benefits under FECA from April 29 through December 21, 2010. On July 7, 2011 OPM informed OWCP that appellant had received \$11,230.60 during the period from April 29 through December 21, 2010.

Appellant requested reconsideration of the March 23, 2011 decision on November 17, 2011 and alleged the diagnosed conditions pertained to the same condition as in the recurrence of 2003. He stated that there was a change in the nature and extent of his employment-related condition. Appellant resubmitted Dr. Hebela's February 25, 2010 report. He also resubmitted Dr. Israelite's March 17, 2010 note recommending hip replacement.

By decision dated November 28, 2011, OWCP stated that it had not reviewed the merits of appellant's claim and that the March 23, 2011 decision approved a specific period of compensation. It stated that he did not submit any new evidence requiring review of the merits.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.⁵ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.⁶ Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but

⁵ 5 U.S.C. §§ 8101-8193, 8128(a).

⁶ 20 C.F.R. § 10.606.

does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁷

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

Appellant filed a claim for compensation requesting wage-loss benefits beginning December 21, 2003. By decision dated March 23, 2011, OWCP authorized compensation benefits for the period April 29 to December 21, 2010 only. It denied any additional period of disability noting that appellant's 1995 loss of wage-earning capacity determination was not modified. Appellant requested reconsideration on November 17, 2011.

As noted above, the Board does not have jurisdiction over the March 23, 2011 OWCP decision. 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 his claim. In his November 17, 2011 request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument previously reviewed by OWCP. Appellant argued that diagnosed conditions pertain to the same condition as in the recurrence of 2003. As evidenced by the history of this case, this is not a new argument. Both the Board and OWCP have addressed appellant's claims for modification of the 2005 loss of wage-earning capacity determination. Furthermore, OWCP addressed this aspect of appellant's claim in the March 23, 2011 decision.

A claimant may also be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(2) as he resubmitted reports from Drs. Israelite and Hebela included in the record at the time of OWCP's March 23, 2011 decision. As noted above, medical reports which are repetitive are not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.

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 or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

⁷ 20 C.F.R. § 10.608.

⁸ *M.E.*, 58 ECAB 694 (2007).

CONCLUSION

The Board finds that, as appellant has not submitted relevant and pertinent new evidence or legal argument, or offered a point of law not previously considered, OWCP properly declined to reopen his claim for consideration of the merits on November 28, 2011.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2012
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