

compensation based on his capacity to earn wages as a parking lot attendant.² The facts and circumstances of the case as set forth in the Board's prior decisions are hereby incorporated by reference.³

In a June 12, 2012 report, Dr. Aubrey A. Swartz, a second opinion Board-certified orthopedic surgeon, reviewed medical evidence and the statement of accepted facts and conducted a physical examination. He concluded that appellant's lumbar spine degenerative changes were age related. Dr. Swartz opined that there was no evidence of any residuals from the January 27, 1988 employment injury as the lumbar strain had resolved. In support of this conclusion, he noted 24 years was "a long time for a strain to continue" particularly when there was no evidence of disc herniation, spinal cord compression, nerve root compression or severe degenerative changes.

On August 31, 2012 OWCP proposed to modify appellant's loss of wage-earning capacity decision to zero and to terminate his compensation benefits based upon the opinion of Dr. Swartz that appellant no longer had any residuals or disability due to the accepted employment injury.

In a letter dated September 29, 2012, appellant disagreed with the proposal, contending that he was totally disabled. In support of his claim, he submitted medical evidence regarding his medical treatment for various conditions including lumbago or back pain for the period April 8, 2004 through August 26, 2012.

By decision dated December 19, 2012, OWCP modified appellant's October 12, 1994 loss of wage-earning capacity determination and finalized the termination of his compensation benefits effective December 16, 2012.

On May 14, 2013 appellant requested reconsideration and submitted factual and medical evidence from 1994 and 1995.

Hospital reports dated January 7 and 12, 1994 noted that appellant was admitted and treated for a gunshot wound.

In reports dated January 10 and 18, 1994, Dr. Jeffrey R. Saffle, a treating Board-certified surgeon, and Dr. Thanh Van Nguyen, a resident, provided physical findings and medical history and reported treating appellant for a gunshot wound to the thigh.

In a February 23, 1994 report, Dr. David E. Curtis, a second opinion Board-certified orthoped surgeon, reviewed the statement of accepted facts and medical evidence, conducted a physical examination and diagnosed mechanical back pain. He indicated that appellant was disabled from his date-of-injury position and provided work restrictions.

² Docket No 95-2110 (issued December 15, 1997).

³ On January 27, 1988 appellant, then a 35-year-old temporary woodworker helper, filed a traumatic injury claim alleging that on January 26, 1988 he injured his lower back in the performance of duty. OWCP accepted the claim for lumbosacral sprain. By letter dated August 2, 1991, it placed appellant on the periodic rolls for temporary total disability.

In a September 23, 1994 report, Kevin S. Masters, Ph.D. and licensed clinical psychologist, recommended a psychiatric evaluation due to appellant's long history of back pain due to an employment-related injury. He diagnosed major depression based on appellant's symptoms.

In a report dated October 24, 1994, Dr. Steven V. Teynor, a treating Board-certified psychiatrist, diagnosed depression, chronic pain, bronchitis, proctitis and severe disability due to chronic pain.

A January 18, 1995 magnetic resonance imaging scan (MRI) scan reported a small L4-5 left paracentral herniated nucleus pulposus without significant neural or spinal forminal narrowing and lower three intervertebral degenerative disc disease.

In a January 18, 1995 clinic note, Dr. Christopher R. Jones, a treating physician, noted that appellant was referred for evaluation of a sleep disorder.

By decision dated June 4, 2013, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations 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) submit relevant and pertinent new evidence not previously considered by OWCP.⁵ 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.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

OWCP accepted appellant's claim for lumbosacral sprain and placed him on the periodic rolls for temporary total disability. The Board affirmed OWCP's decision dated October 12, 1994 reducing appellant's wage-loss compensation based on his capacity to earn wages as a parking lot attendant and a February 7, 1995 decision denying modification of its October 12, 1994 decision reducing appellant's wage-loss compensation. By decision dated December 19, 2012, it terminated compensation benefits based on the weight of Dr. Swartz's June 12, 2012

⁴ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁵ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

second opinion examination report. Appellant requested reconsideration on May 14, 2013 and submitted new evidence. OWCP denied the request on June 4, 2013, finding that he did not present new and pertinent evidence warranting further merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. While appellant submitted medical reports from Drs. Curtis, Jones, Masters, Saffle and Teynor for the period 1994 to 1995 and a January 18, 1995 MRI scan that were not previously considered, this evidence is immaterial because it does not address whether he still experienced residuals and disability due to the accepted lumbosacral sprain. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁸ Moreover, these reports do not address appellant's current medical condition or disability as they are dated years prior to Dr. Swartz's June 12, 2012 opinion and OWCP's December 19, 2012 decision terminating his compensation.⁹

Appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

CONCLUSION

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

⁸ *M.E.*, 58 ECAB 694 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where the issue of whether appellant had continuing disability from his accepted employment injury was medical in nature, he needed to submit relevant medical evidence to reopen the claim on reconsideration).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2013 is affirmed.

Issued: December 19, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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