



Board reversed the termination of benefits, finding that a conflict existed in the medical opinion evidence as to whether appellant had residual disability causally related to the accepted condition.<sup>2</sup> Appellant's compensation benefits were reinstated.

Appellant returned to full-time work with restrictions as a rehabilitation clerk on July 7, 2007. By decision dated September 13, 2007, OWCP determined his rehabilitation clerk position fairly and reasonably represented his wage-earning capacity, and resulted in zero percent loss of wage-earning capacity (LWEC).

On October 12, 2010 appellant filed a claim for compensation for wage loss beginning September 17, 2010. He explained that work was no longer available to him due to the National Reassessment Process.

In a letter dated October 22, 2010, the employing establishment was advised by OWCP that appellant's wage-loss claim would be treated as a claim for modification of the previously established LWEC decision. OWCP requested that the employing establishment submit all current medical reports, a formal position description and other documents upon which appellant's wage-earning capacity had been determined. In response, the employing establishment submitted a series of SF-50 forms.

By December 2, 2010 merit decision, OWCP found that as appellant had provided no medical evidence to reflect a worsening of appellant's condition or any other evidence sufficient to warrant modification of the LWEC decision dated September 13, 2007, OWCP denied appellant's claim on December 3, 2010.

Appellant disagreed with the decision and requested reconsideration on February 18, 2011. Along with the request, he submitted new medical evidence, which pertained to his right knee. By merit decision dated March 2, 2011, OWCP denied appellant's request for modification of his wage-earning capacity determination.

Appellant again requested modification of the LWEC decision on December 5, 2011. In support of this request for reconsideration, he submitted several medical reports which discussed his preexisting condition of hemophilia and its effects on his left knee condition. In a report dated July 14, 2011, Dr. David L. Becton, a Board-certified pediatric hematologist, related that appellant had advanced hemophilia which had caused him to develop a target joint, and had required a left knee replacement due to blood and synovial damage. In an undated report, Dr. Paulette Mehta, Board-certified in pediatric hematology, related that appellant had hemophilia since birth and that it had caused hepatitis C, as well as joint swelling. She concluded that appellant should avoid strenuous physical activity.

OWCP again denied appellant's request for modification of the wage-earning capacity determination on March 21, 2012. It noted that appellant's preexisting conditions of hemophilia

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<sup>2</sup> Docket No. 04-265 (issued July 22, 2004). On April 1, 1995 appellant, then a 27-year-old distribution clerk, filed a claim for traumatic injury claim stating that he twisted his left knee while loading mail onto a ledge. The claim was accepted for a left knee strain, then later expanded to include aggravation of left knee arthritis.

and hepatitis had not been accepted by OWCP and therefore did not establish the wage-earning capacity determination had been issued in error.

On November 7, 2012 appellant requested reconsideration. In support of his request, appellant submitted a January 18, 2012 letter from the Office of Personnel Management (OPM) which stated that he had been found to be disabled for the position of mail processing clerk due to the conditions of hemophilia and left knee replacement.

In a December 6, 2012 decision, OWCP declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit relevant new evidence in support of his request for reconsideration.

### **LEGAL PRECEDENT**

OWCP has the discretion to reopen a case for review on the merits.<sup>3</sup> An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

OWCP issued a decision on September 13, 2007 finding that appellant had no LWEC. In a series of decisions OWCP denied modification of the wage-earning capacity determination. On November 7, 2012 appellant requested reconsideration. He did so by checking a box utilizing the appeal request form which accompanied the March 21, 2012 decision which denied modification of his wage-earning capacity determination. Appellant also submitted a January 18, 2012 letter from OPM which stated that he had been found to be disabled for the position of mail processing clerk due to the conditions of hemophilia and left knee replacement.

The Board finds that OWCP did not abuse its discretion by denying merit review on December 6, 2012.

While appellant enclosed a copy of OPM's decision, he did not address the issue in the case or explain how the enclosed decision was arguably relevant.<sup>6</sup> Appellant did not articulate a specific legal basis for his request for further review. As such, the November 7, 2012 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2) (2011).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *T.B.*, Docket No. 11-1185 (issued February 17, 2012).

specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. While appellant did submit a new piece of evidence, OPM's decision, the Board has long held that findings of other federal agencies are not dispositive with regard to questions arising under FECA.<sup>7</sup> He did not submit any new evidence that might arguably impact the prior decision regarding modification of the LWEC determination. Consequently, appellant is not entitled to a merit review under section 10.606(b)(2).

Appellant may submit new relevant evidence or argument to OWCP with respect to a modification of the wage-earning capacity and receive a merit decision, at any time.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2013  
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

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<sup>7</sup> See *D.I.*, 59 ECAB 158 (2007); see also *J.F.*, 59 ECAB 331 (2008).