



## **FACTUAL HISTORY**

This is the third appeal before the Board. Appellant, then a 55-year-old mail expeditor, injured his back and left leg on December 30, 2006. OWCP accepted a claim for back contusion; abrasion or friction burn of the left leg, not including the foot, with no infection.

Appellant underwent an abdominal aortogram on June 12, 2008 which showed that he had an abdominal aneurysm. He was referred to Dr. Stanley G. Crossland, a specialist in vascular surgery, who stated in a June 12, 2007 report that appellant had developed an abdominal-iliac aneurysm with emboli in both lower extremities. Dr. Crossland performed an amputation of the right leg, below the knee, an endovascular aortoiliac repair procedure. He later required amputation of the first, fourth and fifth toe of the left foot. Dr. Crossland advised that appellant had a known history of hypertension and noninsulin-dependent diabetes mellitus and stated that he had been diagnosed with a large infrarenal abdominal aortic aneurysm, an iliac aneurysm with a large amount of thrombus, in February 2007. In an addendum to the statement of accepted facts dated April 17, 2008, OWCP indicated that appellant's aneurysms in the abdominal aorta and iliac were nonwork-related conditions.

In order to determine whether appellant's aneurysm, emboli and subsequent amputations of his right leg and left toes were causally related to the December 30, 2006 work injury, and whether he still had residuals from his accepted conditions, OWCP referred appellant to Dr. Joshua A. Eisenberg, the second opinion physician, who opined in his May 28, 2008 report that appellant's embolic disease was not related to the December 30, 2006 traumatic injury. OWCP found that there was a conflict in the medical evidence between appellant's treating physician, Dr. Crossland, who opined that appellant had residuals due to an aneurysm causally related to the December 30, 2006 work injury, and Dr. Eisenberg, who opined that appellant's embolic disease was not related to the December 30, 2006 traumatic injury. It referred the case to a referee medical specialist, Dr. Maurice R. Roulhac, a Board-certified general surgeon, on February 24, 2009.

In a June 14, 2009 report, Dr. Roulhac opined that appellant's December 30, 2006 work injury to the right leg<sup>3</sup> did not aggravate or contribute to the embolism that resulted in his bilateral limb amputations. He stated that the aneurysm of the aortoiliac segment was present prior to the injury and did not lead to immediate emboli. Dr. Roulhac asserted that there was no medical literature supporting that a blunt trauma could cause emboli immediately or, as Dr. Crossland asserted, five months later. He advised that these sequences of events are perioperative complications and completely unrelated to the work injury. Dr. Roulhac opined that an aneurysm can lead to emboli regardless of trauma. He opined that appellant's condition stemmed from a management problem rather than a sequelae from blunt trauma, given that appellant had an abdominal aortic aneurysm and mural thrombus.

By decision dated August 17, 2009, OWCP terminated appellant's compensation, finding that Dr. Roulhac's opinion represented the weight of the medical evidence. It further found that appellant's aneurysm and subsequent bilateral limb amputations were not causally related to his December 30, 2006 work injury. OWCP noted that the record indicated that appellant had a

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<sup>3</sup> The Board notes that Dr. Roulhac referred to the date of injury as December 20, not December 30, 2006, the actual date of injury.

preexisting condition, abdominal aortic aneurysm, at the time of the December 30, 2006 work injury which did not become symptomatic until the May 2007 events in which appellant developed gangrene, discoloration and inflammation in his right calf and right toe. Following a request for reconsideration, by decision dated November 5, 2009, it denied modification of the August 17, 2009 decision. Following an appeal to the Board, in a December 17, 2010 decision,<sup>4</sup> the Board reversed OWCP's termination, but affirmed its finding that appellant had not met his burden of proof to establish an abdominal aortic aneurysm and an embolic condition in the performance of duty.

By letter dated July 18, 2012, appellant requested reconsideration. In a March 17, 2011 report, Dr. Crossland reiterated his opinion regarding the etiology of appellant's conditions. He asserted that the injury to appellant's lower back started the progression of aortoiliac clot dislodgement which subsequently produced embolization leading to his progressive damage in both lower extremities, which resulted in his bilateral lower extremity amputations; these procedures, as noted above, were not accepted by OWCP as work related.<sup>5</sup> By decision dated October 10, 2012, OWCP denied modification of the prior decision. In an April 8, 2013 decision,<sup>6</sup> the Board affirmed the October 10, 2012 OWCP decision, finding that the weight of medical opinion was still represented by the report of Dr. Roulhac, the impartial medical specialist, and that Dr. Crossland was merely restating one side of the conflict in medical evidence which had been resolved by Dr. Roulhac. The complete facts of this case are set forth in the Board's December 17, 2010 and April 8, 2013 decisions and are herein incorporated by reference.

By letter dated August 28, 2013, appellant requested reconsideration. He submitted a copy of an August 19, 2013 inquiry from his congressional representative, but did not submit any additional medical evidence in support of his request.

By decision dated September 18, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.<sup>7</sup> Evidence that repeats or

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<sup>4</sup> Docket No. 10-550 (issued December 17, 2010).

<sup>5</sup> The Board notes that OWCP only accepted the conditions of back contusion and abrasion or friction burn of the left leg, not including the foot, with no infection. The Board has not accepted any conditions for the right leg.

<sup>6</sup> Docket No. 13-261 (issued April 8, 2013).

<sup>7</sup> 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup>

### **ANALYSIS**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. The issue in this case is medical; *i.e.*, whether he submitted probative, rationalized medical evidence sufficient to establish an abdominal aortic aneurysm or an embolic condition due to his employment. Appellant did not submit any medical evidence in support of his request for reconsideration. His reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *Howard A. Williams*, 45 ECAB 853 (1994).