



stepped off an extra-high porch. He felt shooting pains in his lower back on April 2, 2012. Appellant thought the pain might diminish, but he felt the same shooting pains the next day. The pain increased, so he sought medical attention. Appellant stated: "I believe my pain is a result from an incident in which I stepped off an elevated porch. Past date is unknown at this time."

By a July 11, 2012 decision, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that a diagnosed medical condition was causally related to the accepted work incident. Its hearing representative affirmed on January 31, 2013, finding that appellant had not submitted sufficient evidence to establish that any lower back condition was causally related to the March 9, 2012 work incident.<sup>2</sup>

In a decision dated August 5, 2013, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that the April 3, 2013 evaluation by Dr. John R. Babb, a Board-certified orthopedic surgeon, was insufficient to establish the element of causal relationship. OWCP found that he did not provide sufficient rationale to support his opinion. Dr. Babb did not provide a definitive diagnosis or explain how the incident caused appellant's current condition. He noted an aggravation of underlying degenerative disc disease, but he did not indicate what level of the spine. Dr. Babb did not discuss the natural course of appellant's condition and how he was able to determine that the March 9, 2012 incident changed or worsened it.

Appellant requested reconsideration and submitted a November 1, 2013 addendum from Dr. Babb, who noted that he was being asked to clarify appellant's diagnosis, causation of injury and how the injury altered the course of his underlying degenerative disc disease. After relating appellant's history of injury and the findings of an imaging study obtained on April 12, 2012, Dr. Babb advised that appellant's definitive diagnosis was low back pain with degenerative disc disease at L2-3, L3-4 and L4-5; moderate canal spinal stenosis at L2-3; and mild canal stenosis at L3-4 and L4-5. He explained that the incident more likely than not aggravated the underlying degenerative disc disease, making it active and painful. Appellant did not have pain prior to the incident and reported that he had immediate pain at the time of the incident. "It is within a reasonable degree of medical probability that his fall has aggravated his degenerative disc disease at L2-3, L3-4 and L5-S1 levels."

In a decision dated February 13, 2014, OWCP denied appellant's reconsideration request. It found that Dr. Babb's addendum was insufficient to warrant a further merit review of appellant's case.

### **LEGAL PRECEDENT**

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>3</sup> An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final

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<sup>2</sup> Appellant filed an appeal with the Board on March 5, 2013. The Board, at the request of counsel for appellant, dismissed the appeal on May 31, 2013. *See* Docket No. 13-893 (issued May 31, 2013).

<sup>3</sup> 5 U.S.C. § 8128(a).

decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### ANALYSIS

OWCP received appellant's reconsideration request within one year of the most recent merit decision, namely, the August 5, 2013 decision denying his traumatic injury claim. Appellant's request is therefore timely. The question for determination is whether the request meets at least one of the standards for obtaining a merit review of his case.

To support his reconsideration request, appellant submitted a November 1, 2013 addendum from Dr. Babb, who was asked to address some of the deficiencies noted in the August 5, 2013 decision. Dr. Babb offered a definitive diagnosis of low back pain with degenerative disc disease and spinal canal stenosis, and identified the specific levels of spinal involvement. Appellant had degenerative disc disease at L2-3, L3-4 and L4-5, with moderate canal stenosis at L2-3 and mild canal stenosis at L3-4 and L4-5. Dr. Babb explained that the incident caused appellant's underlying degenerative disc disease to become active and painful. His medical rationale was that appellant did not have pain prior to the incident but reported immediate pain at the time of the incident.

The Board finds that Dr. Babb's addendum is relevant and pertinent new evidence not previously considered by OWCP. It directly addressed issues found by OWCP's most recent merit decision, such as the failure to provide a definitive diagnosis and the failure to identify specific levels of spinal involvement. Dr. Babb addressed the March 9, 2012 incident and noted that it aggravated appellant's underlying degenerative disc disease.

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<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> *Id.* § 10.607(a).

<sup>6</sup> *Id.* § 10.608.

For purposes of this appeal, the probative value of Dr. Babb's addendum is not at issue.<sup>7</sup> It matters only that the medical evidence submitted to support appellant's reconsideration request is new and relevant on the underlying issue of causal relation.

Accordingly, as appellant's reconsideration request met at least one of the standards for obtaining a merit review of his case, the Board will set aside OWCP's February 13, 2014 decision denying reconsideration and will remand the case for an appropriate merit review of appellant's traumatic injury claim.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's reconsideration request. The request provided relevant and pertinent new evidence not previously considered by OWCP.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 13, 2014 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action in conformance with this decision of the Board.

Issued: August 6, 2014  
Washington, DC

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

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

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

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<sup>7</sup> The Board has held that the requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his/her burden of proof. *See C.C.*, Docket No. 10-1442 (issued February 10, 2011); *Helen E. Tschantz*, 39 ECAB 1382 (1988).