

appellant submitted an October 17, 2013 progress note and February 10, 2014 report from Dr. Sanford A. Ratzan, appellant's treating Board-certified orthopedic surgeon, who diagnosed lumbosacral sprain, herniated lumbar disc, post-traumatic degenerative disc disease, cervical sprain, cervical radiculitis, and left hip trochanteric tendinitis and bursitis. Physical examination findings of the lumbosacral spine included 10 degrees extension, 20 degrees lateral bending and rotation, less than 70 degrees flexion, and 1 to 2+ lumbosacral paraspinal muscle spasm with bend and rotation. Dr. Ratzan opined that appellant was unable to perform part-time sedentary work based on her restrictions. Appellant's work restrictions included up to 2 hours standing; up to 30 minutes of sitting; no more than a total of 2 hours per day of sitting, standing, and walking; no more than 2 hours total of moving from a sitting to a standing position; no repetitive standing or sitting; carrying up to 10 pounds; and less than 5 pounds of repetitive carrying. In his February 10, 2014 report, Dr. Ratzan stated that magnetic resonance imaging scans and x-ray interpretations from August 2010 and current studies revealed a chronic L4 and L4-5 herniated lumbar disc and disability. Based on the objective data and findings from prior reports, he opined that appellant is permanently disabled due to her lumbosacral spine condition from performing her date-of-injury job and "sedentary activities as noted."

By decision dated April 15, 2014, OWCP denied modification of the November 22, 2006 LWEC determination. It found that appellant's counsel did not raise new legal arguments as they were "substantially the same objections" previously considered. OWCP also found the medical evidence submitted insufficient to warrant modification as it was duplicative and considered in the November 29, 2010 decision. It noted that all of appellant's preexisting and work-related conditions were discussed in prior decisions and that subsequent conditions need not be considered.

Board precedent holds that OWCP must review all the evidence submitted by a claimant and received by OWCP prior to the issuance of a final decision.³ As the Board's jurisdiction is final as to the subject matter, it is crucial that OWCP accomplish this process of review.⁴

Because OWCP only mentioned Dr. Ratzan's August 2, 2010 report in its April 15, 2014 decision, it is clear to the Board that OWCP did not consider the two new medical reports dated February 10 and October 17, 2014 from Dr. Ratzan submitted by appellant in support of modification of the November 22, 2006 LWEC determination. Whether it receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.⁵ As OWCP failed to address all the relevant evidence of record at the time it issued appellant's April 15, 2014 decision it is set aside and the case is remanded for a proper review of the evidence and issuance of a *de novo* final decision as to the issue of whether appellant's LWEC warrants modification.

³ See *M.B.*, Docket No. 09-17 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision); *William A. Couch*, 41 ECAB 548 (1990); 20 C.F.R. § 501.6(c).

⁴ See *id.*

⁵ *Willard McKennon*, 51 ECAB 145 (1999).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2014 is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: March 25, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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