



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. Facts relevant to this appeal are set forth below.

OWCP accepted appellant's August 29, 2011 claim that, while working as a laborer and mason, he sustained lumbar strain due to lifting rocks, cutting brush, and carrying logs in the performance of duty. It terminated his benefits on May 20, 2013, finding that appellant had no continuing residuals of his accepted lumbar strain condition. Appellant requested a hearing before the Branch of Hearings and Review and on February 12, 2014 the hearing representative affirmed the termination of compensation benefits. Thereafter appellant filed an appeal with the Board. By decision dated September 18, 2014, the Board affirmed the termination of benefits.

On October 9, 2014 appellant, through counsel, requested reconsideration. With his request, appellant submitted medical records from a registered nurse. He also submitted the results of a diagnostic test of his right foot, dated October 20, 2010. Appellant also resubmitted a report, dated November 10, 2011, from Dr. David Brown, a Board-certified radiologist.

In a hospital record dated April 18, 2013, Dr. Carl F. von Trampe, Board-certified in emergency medicine, diagnosed probable gout of appellant's right foot.

In a report of a surgical procedure dated September 5, 2014, Dr. Scot Murray, a Board-certified gastroenterologist, described performing a colonoscopy on appellant with no complications.

By decision dated October 21, 2014, OWCP denied appellant's request for reconsideration without reviewing the merits of his case. It found that he had not submitted any relevant and pertinent evidence not previously considered by OWCP.

On December 16, 2014 appellant, through counsel, again requested reconsideration.

In a report dated October 31, 2014, Dr. Lynn W. Puana, an internist, noted that appellant told her that the onset of his back pain was on September 15, 2010 due to an old injury. She examined him and diagnosed lumbar facet syndrome and occasional radiculitis secondary to lumbar spondylosis. Dr. Puana recommended potential injections, physical therapy, and medication.

On October 20, 2013 Dr. Puana examined appellant and diagnosed lower back pain, lumbosacral spondylosis, and thoracic or lumbosacral neuritis or radiculitis. She noted that he had undergone a surgical procedure of bilateral lumbar median branch blocks for his back on October 3, 2014, and that appellant's pain level diminished from 5 out of 10 to 3 out of 10.

By decision dated March 18, 2015, OWCP denied appellant's request for reconsideration without reviewing the merits of his case.

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<sup>2</sup> A.A., Docket No. 14-1091 (issued September 18, 2014).

On August 21, 2015 appellant, through counsel, again requested reconsideration. With his request, he resubmitted the October 31, 2014 report of Dr. Puana. Appellant also submitted surgical reports from September 2 and October 3, 2014 from Dr. Puana, describing successful surgical procedures of a right lumbar transforaminal epidural and lumbar median branch blocks, respectively.

On May 13, 2015 Dr. Puana noted that appellant had pain in his bilateral lumbar back. She diagnosed him with lumbar facet joint pain, lumbosacral spondylosis, thoracic or lumbosacral neuritis or radiculitis, and low back pain.

In a surgical report dated June 18, 2015, Dr. Puana described performing a right lumbar three level medial branch rhizotomy without complications.

In a follow-up report dated July 2, 2015, Dr. Puana noted that appellant felt 90 percent relief after the surgical procedure. She diagnosed him with lumbar facet joint pain, lumbosacral spondylosis, thoracic or lumbosacral neuritis or radiculitis, and low back pain.

By decision dated September 10, 2015, OWCP denied appellant's request for reconsideration without reviewing the merits of his case. It found that he had not submitted any pertinent and relevant evidence not previously considered and that, while appellant had submitted new medical evidence diagnosing him with numerous lumbar conditions, the medical reports did not explain whether this condition was causally related to his original accepted condition of lumbar sprain.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup> Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

### **ANALYSIS**

OWCP terminated appellant's wage-loss and medical compensation by decision dated July 10, 2013. The Board affirmed the termination on September 18, 2014. Thereafter, he requested reconsideration several times from OWCP, most recently on August 21, 2015. By decision dated September 10, 2015, OWCP denied appellant's request for reconsideration without reviewing the merits of his case.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

<sup>4</sup> *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of his claim. In his August 21, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

A claimant may be entitled to a merit review by submitting new and relevant evidence; however, appellant did not do so in this case. The underlying issue is whether appellant met his burden of proof to establish continuing residuals of his work-related injury.

While appellant submitted numerous medical reports, some of which were previously of record, none of the medical reports submitted on reconsideration discuss the causal relationship between his current symptoms and that of his work-related injury, which was found to have resolved. After a termination decision is issued, the burden of proof shifts to appellant to establish that any subsequent medical condition or disability is related to the earlier accepted work injury.<sup>5</sup> As appellant did not submit any evidence containing an explanation of the causal relationship between his current symptoms and the accepted injury, he did not submit any evidence relevant to the underlying issue of OWCP's decision to terminate his wage-loss and medical compensation. As such, the reports are insufficient to warrant reconsideration of his claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>5</sup> See *M.H.*, Docket No. 13-1315 (issued November 14, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 10, 2015 is affirmed.

Issued: April 6, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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