



schedule award after finding that he had not submitted medical evidence showing that he sustained a permanent impairment of the lower extremities.

On March 11, 2012 appellant requested reconsideration of the May 1, 2009 decision. He contended that his condition had materially worsened. Appellant related that he had submitted new medical evidence under file number xxxxxx248 relevant to lumbar strain but that the case was closed. He referred to accompanying new medical evidence showing L4-5 spondylolithesis under file number xxxxxx248. In support of his request for reconsideration, appellant submitted a December 20, 2011 impairment evaluation from a physical therapist and numerous medical reports originally provided under other file numbers.

On March 18, 2012 appellant argued that all his claims regarding his back and right leg should be combined. He asserted that he was requesting reconsideration of the May 1, 2009 decision based on newly submitted medical evidence. Appellant referenced medical evidence submitted in connection with another file number.

By decision dated March 30, 2012, OWCP denied appellant's request for reconsideration as untimely filed and insufficient to establish clear evidence of error. It stated:

“Your March 18, 2012 request for reconsideration cites new evidence and medical records. Since your request is untimely, we are not obligated to review new evidence. You did not explain in your reconsideration request how the prior decision or decisions were in error. Therefore, there is no basis for a review.”

This is not, however, the proper standard. In order to determine whether appellant has established clear evidence of error, OWCP will review the evidence submitted and arguments raised in support of the request and determine whether such evidence or argument is sufficient to show error in its prior decision.<sup>2</sup> It shall then issue a decision containing findings of fact and conclusions of law.<sup>3</sup> OWCP did not discuss any evidence or argument submitted in support of the reconsideration request. Its failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision. The case, therefore, is remanded to OWCP for an appropriate decision containing a detailed explanation of its determination regarding its denial of his reconsideration request.<sup>4</sup>

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<sup>2</sup> See *George C. Vernon*, 54 ECAB 313 (2003).

<sup>3</sup> 20 C.F.R. § 10.126.

<sup>4</sup> In view of the Board's finding regarding the denial of his request for reconsideration, the issue of whether OWCP properly denied appellant's request for a hearing as it was made after he requested reconsideration is moot.

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 14 and March 30, 2012 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 12, 2012  
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