

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MARIA ALMARAZ, Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Fresno, CA,  
Employer**

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**Docket No. 05-981  
Issued: July 19, 2005**

*Appearances:*  
*Maria Almaraz, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 22, 2005 appellant filed a timely appeal from a December 22, 2004 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Because more than one year has elapsed between the last merit decision dated December 10, 2003 and the filing of this appeal on March 22, 2005, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the December 22, 2004 nonmerit decision.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim.

### **FACTUAL HISTORY**

On March 1, 2002 appellant, then a 39-year-old customer service representative, filed an occupational injury claim, which was accepted for a right shoulder sprain. Appellant returned to work with restrictions on May 1, 2002.

On August 29, 2002 appellant filed a claim for recurrence of disability, which was denied by decision dated October 30, 2002.

On February 4, 2003 appellant filed a claim for compensation (Form CA-7) for one-half hour of therapy on January 29 and February 3, 2003. By letter dated February 25, 2003, the Office requested additional medical evidence establishing a causal relationship between the alleged period of disability and her February 25, 2002 employment injury.

In a report dated February 12, 2003, Dr. Thomas J. O'Laughlin, a Board-certified physiatrist, stated that appellant suffered from unrelenting cervicospinal and upper extremity myofascial pain syndrome, chronic muscular tendinitis and upper extremity overuse. He opined that her repetitive strain and stressors at work were perpetuating her condition. Dr. O'Laughlin recommended that appellant be placed off work for one month.

On March 5, 2003 appellant filed a claim for compensation (Form CA-7) for February 13 through 22, 2003. By letter dated March 11, 2003, the Office requested additional medical evidence establishing a causal relationship between the alleged period of disability and her February 25, 2002 employment injury.

On March 10, 2003 appellant filed a claim for compensation (Form CA-7) for February 23 through March 8, 2003. In a February 26, 2003 attending physician's report, Dr. O'Laughlin stated that appellant suffered from severe myofascial pain and cervical degeneration as a result of cumulative work trauma. He also opined that appellant's condition was caused by repetitive neck movements in the course of her employment. In response to the question as to whether appellant had experienced a period of total disability, he responded, "None, so far."

By letter dated March 21, 2003, the Office requested additional medical evidence establishing a causal relationship between the alleged period of disability and her February 25, 2002 employment injury.

In a letter dated March 10, 2003, Dr. O'Laughlin discussed appellant's work history of data entry and keyboarding, indicating that the development of chronic tendinitis and upper extremity pain has prevented her from working. In a March 13, 2003 letter, he advised appellant to remain off work.

On March 21, 2003 appellant filed a claim for compensation (Form CA-7) for March 9 through 22, 2003.

By decision dated April 9, 2003, the Office denied appellant's claims for compensation, finding that she had submitted insufficient medical evidence to establish that her current condition was causally related to her accepted work injury.

In an April 11, 2003 report, Dr. O'Laughlin stated that appellant was depressed, anxious and "emotionally liable" due to the denial of her claim. In an addendum to his May 9, 2003 report, he stated that appellant demonstrated objectively, reproducible functional tasking limitations of the musculature, abnormal muscular texture and reproducible areas of point tenderness. He further indicated that, although there was no imaging study available yet to document myofascial pain syndrome, the condition is a "very common industrial problem."

On May 22, 2003 appellant submitted a request for reconsideration.

In a report dated June 4, 2003, Dr. O'Laughlin stated that "it should be very obvious in the review of the records of this patient that her pain syndrome is very directly related to her excessive usage of her upper extremities keyboarding for the [employing establishment] for a multitude of years, going back to her carpal tunnel release in 1991, a very clear repetitive usage problem, and she has had ongoing tendinitis, upper extremity pain, numbness and aching."

In a decision dated August 24, 2003, the Office denied modification of its April 9, 2003 decision, finding that the medical evidence presented was cumulative in nature and failed to establish a recurrence.

In a report dated September 5, 2003, Dr. O'Laughlin noted that appellant continued to exhibit symptoms associated with myofascial pain syndrome, muscular tendinitis, cervicospinal myofascial pain and an emerging fibromyalgia syndrome.

On October 17, 2003 appellant again requested reconsideration. In conjunction with her request, appellant submitted a statement expressing her belief that her condition was worsening due to lack of therapy.

In a decision dated December 11, 2003, the Office denied modification of its April 9 and August 24, 2003 decisions, finding that the medical evidence presented was insufficient to establish a causal relationship between her current condition and the accepted employment injury.<sup>1</sup>

Subsequent to the Office's December 11, 2003 decision, appellant submitted several reports by Dr. O'Laughlin. A November 11, 2003 report reflected diagnoses of myofascial pain, bilateral upper extremity overuse syndrome, bilateral trapezius, cervicospinal myofascial/muscular spasm and an increasing cervical degenerative problem. In a January 14, 2004 report, Dr. O'Laughlin indicated that appellant had recurrences of her neck and shoulder pain. A February 26, 2004 report reflected an exacerbation of myofascial pain. In a March 31, 2004 report, he assessed appellant with chronic muscle myofascial pain in the anterior deltoid, right forearm greater than the left, secondary to repetitive overuse strain. Dr. O'Laughlin indicated that appellant's muscle pain condition was due to overwork, *i.e.*, using her arms in a repetitive

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<sup>1</sup> The Office's decision reflects that appellant has filed a total of 10 federal workers' compensation claims.

fashion all day. In a May 6, 2004 report, Dr. O’Laughlin indicated that he was releasing appellant to regular duty with modifications of her workstation.

On November 15, 2004 appellant submitted another request for reconsideration, stating that she did not understand why the Office denied her claim.

By decision dated December 22, 2004, the Office denied appellant’s request for reconsideration, finding that appellant had submitted no relevant medical evidence addressing the period of alleged disability or offered any argument which challenged the validity of its prior decisions.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>2</sup> the implementing regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>5</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.<sup>6</sup>

### **ANALYSIS**

In her November 15, 2004 letter requesting reconsideration, appellant expressed her disagreement with the Office’s denial of her claim. However, she did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled

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<sup>2</sup> 5 U.S.C. § 8128(a) (providing that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> 20 C.F.R. § 10.608(b); *see also* *Thomas L. Agee*, 56 ECAB \_\_\_\_ (Docket No. 05-335, issued April 19, 2005).

<sup>5</sup> *See Betty A. Butler*, 56 ECAB \_\_\_\_ (Docket No. 04-2044, issued May 16, 2005).

<sup>6</sup> *Id.*

to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>7</sup>

With respect to the third requirement under section 10.606(b)(2), appellant did not submit relevant and pertinent new evidence not previously considered by the Office.<sup>8</sup> In support of her November 15, 2004 request for reconsideration, appellant submitted several medical reports from Dr. O’Laughlin describing her current condition. However, none of those reports addressed the accepted February 25, 2002 work-related injury or provided a rationalized medical opinion as to how appellant’s current condition was causally related to the accepted right shoulder strain. Moreover, not one of these reports address the periods of disability claimed by appellant in January, February and March 2003. Therefore, they are irrelevant and lack probative value. Dr. O’Laughlin’s reports are essentially duplicative of evidence already in the record and, thus, do not constitute a basis for reopening the case.<sup>9</sup> The Board finds that the Office properly denied appellant’s request for merit review.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant’s claim for merit review on December 22, 2004.

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<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>9</sup> See *Betty A. Butler*, *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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