

performance of her federal job. Appellant noted that she had worked at her present craft for four years and that she was “constantly and repetitively having to reach, lift, bend and twist to pick up the mail...”

Appellant underwent a magnetic resonance imaging (MRI) scan on November 4, 2004 which demonstrated a full thickness insertion infraspinatus tendon tear. Dr. Gracie Etienne, an attending Board-certified orthopedic surgeon, examined her on November 17, 2004 and diagnosed left shoulder internal derangement with rotator cuff tear. She did not discuss the cause of this condition. On November 23, 2004 Dr. Etienne completed a form report and diagnosed torn rotator cuff. She indicated that appellant’s injury was due to repetitive motion.

In a letter dated January 5, 2005, the Office requested additional factual and medical information from appellant and allowed 30 days for a response. Appellant responded with additional factual information detailing her employment duties since 1987. She stated that all work at the employing establishment was repetitive. Appellant requested additional time to submit medical evidence on January 31, 2005. The Office denied this request on February 9, 2005.

By decision dated February 16, 2005, the Office denied appellant’s claim finding that, although she had submitted evidence of a diagnosed condition and provided a detailed statement regarding the employment duties which she felt led to this condition, she did not submit sufficient medical opinion evidence addressing the causal relationship between her diagnosed condition and her employment.

Appellant requested reconsideration on March 9, 2005 and submitted additional medical evidence. Beginning on October 29, 2004 Dr. Etienne stated that appellant was experiencing increasing left shoulder pain with activity. She diagnosed left shoulder rotator cuff tear with impingement and internal derangement on November 10, 2004. In a report dated February 2005, Dr. Etienne noted that she had previously treated appellant for carpal tunnel syndrome. She noted that appellant reported burning pain in the left shoulder and that the MRI scan confirmed a left rotator cuff tear. Dr. Etienne stated, “This is also from repetitive motion with strain.”

By decision dated August 16, 2005, the Office reviewed appellant’s claim on the merits and denied modification, finding that Dr. Etienne did not provide a sufficient factual background and medical reasoning in support of her opinion that appellant’s left shoulder condition was due to factors of her federal employment.

Appellant requested reconsideration on July 21, 2006. In support of this request, she noted that she had changed physicians and submitted a therapy note dated July 5, 2006 signed by an occupational therapist.¹

By decision dated October 18, 2006, the Office reviewed appellant’s claim on the merits and denied modification of its prior decisions.

¹ The reports of therapists have no probative value on medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion. *James Robinson, Jr.*, 53 ECAB 417, 419-20 (2002).

Appellant requested reconsideration on January 10, 2007 and stated that additional evidence would be forthcoming.

By decision dated January 22, 2007, the Office declined to reopen appellant's claim for review of the merits on the grounds that she failed to submit any evidence or argument in support of her reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.² To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence of existence of a the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

ANALYSIS -- ISSUE 1

Appellant has identified the employment factors of lifting bundles of magazines which she contends caused or contributed to her left shoulder condition. However, the Office found that she had not submitted the necessary medical opinion evidence to establish a causal relationship between her left shoulder condition and her implicated employment duties.

In support of her claim, appellant submitted several reports from Dr. Etienne, a Board-certified orthopedic surgeon, diagnosing left shoulder rotator cuff tear. On November 23, 2004 Dr. Etienne completed a form report and responded to the question of whether her diagnosis was related to the employment by stating "yes" and attributing appellant's condition to repetitive motion. This report did not contain a statement by Dr. Etienne identifying the specific employment duties which she felt resulted in appellant's condition. Without further explanation, the statement that there was a causal relationship between appellant's repetitive motion and her shoulder condition is not sufficient to meet appellant's burden of proof.⁴

In a report dated February 2005, Dr. Etienne noted that appellant reported burning pain in her left shoulder and that the MRI scan confirmed the diagnosis of left shoulder rotator cuff tear. She stated, "This is also from repetitive motion with strain." This statement fails to provide rationale in support of the physician's stated conclusion. While Dr. Etienne is attributing

² 20 C.F.R. § 10.5(q).

³ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁴ The Board has held that merely checking "yes" on a form report, without additional explanation, is not sufficient to establish causal relation. *See Calvin E. King*, 57 ECAB 394 (2000).

appellant's condition to her employment duties, she again failed to specifically identify the duties on which to offer any medical reasoning explaining how and why such duties lead to the diagnosed condition. Without medical rationale explaining the nature of the relationship between the diagnosed condition of tear of the left rotator cuff and the specific employment factors of repetitive lifting of magazine weighing up to 25 pounds identified by the claimant, these reports are not sufficient to meet appellant's burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's October 18, 2006 merit decision on January 10, 2007. She did not submit any evidence or legal argument in support of her request. As appellant failed to comply with the requirements of the Act and the Office's regulations, the Office properly denied her request for reconsideration and declined to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that appellant has failed to submit the necessary rationalized medical opinion evidence to establish that she developed a tear in her left rotator cuff due to her employment duties. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on January 22, 2007.

⁵ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2007 and October 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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