

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

---

T.S., Appellant )  
and ) Docket No. 11-121  
U.S. POSTAL SERVICE, BULK MAIL ) Issued: August 5, 2011  
CENTER, Jacksonville, FL, Employer )  
\_\_\_\_\_  
)

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 18, 2010 appellant filed a timely appeal from a September 10, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The last merit decision was issued on December 22, 2009. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board does not have jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. On June 30, 2008 appellant, then a 53-year-old equipment operator, alleged that he injured his left shoulder when his vehicle ran over a bump in the road. By decision dated August 26, 2008, OWCP denied his claim, finding that he failed to submit sufficient medical evidence to support a left shoulder injury arising from the incident of June 30, 2008.

On September 23, 2008 appellant requested reconsideration and submitted a September 10, 2008 report from Dr. H. Lynn Norman, Board-certified in orthopedic surgery, who initially examined appellant on July 18, 2008 for evaluation of his left shoulder symptomatology. Dr. Norman noted that appellant had undergone prior left shoulder surgery repair in October 2007 but never fully recovered. He continued to experience persistent pain and was diagnosed with a full thickness tear of the supraspinatus tendon of the left shoulder on September 2, 2008. Dr. Norman opined that appellant's torn rotator cuff required further treatment and was directly related to a work injury that he sustained in April 2007. He recommended a left shoulder arthroscopy/rotator cuff repair surgery.

By decision dated October 7, 2008, OWCP denied modification of its August 26, 2008 decision.

On October 28, 2008 appellant requested reconsideration.

In a July 18, 2008 report, Dr. Norman stated that appellant continued to experience left shoulder pain stemming from his preexisting left shoulder condition. He diagnosed left rotator cuff tendinitis with possible retear.

By decision dated November 5, 2008, OWCP denied modification of the October 7, 2008 decisions.

In a September 22, 2009 decision,<sup>2</sup> the Board affirmed OWCP's determination that appellant failed to submit sufficient evidence to establish that he sustained a left shoulder injury in the performance of duty on June 30, 2008. The facts of this case as set forth in the Board's September 22, 2009 decision are incorporated by reference.

By letter dated October 12, 2009, appellant's attorney requested reconsideration, noting work-related injuries appellant had previously sustained. By decision dated December 22, 2009, OWCP denied modification of its previous decisions.

By letter dated July 23, 2010, appellant's attorney requested reconsideration. He resubmitted Dr. Norman's September 10, 2008 report, but did not submit any new medical evidence.

---

<sup>2</sup> Docket No. 09-616 (issued September 22, 2009).

By decision dated September 10, 2010, OWCP denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to warrant review of the prior decisions.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup>

### **ANALYSIS**

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; did not advance a relevant legal argument not previously considered by OWCP; and did not submit relevant and pertinent evidence not previously considered by OWCP. The evidence appellant submitted in connection with his July 23, 2010 reconsideration request was not new and relevant evidence. The September 10, 2008 report from Dr. Norman was previously reviewed by OWCP on October 7, 2008, and by the Board on September 22, 2009. This report is therefore cumulative and repetitive. The Board has held that the submission of 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> Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

---

<sup>3</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>4</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>5</sup> *See Mary A. Ceglia*, 55 ECAB 185 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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