

employment. She had worked at the employing establishment for 14 years and her job duties included casing, and loading mail. Appellant stopped work on March 8, 2014. By letter dated April 30, 2014, OWCP requested that she submit additional evidence to support her claim.

Appellant submitted a March 26, 2014 treatment note from Dr. Todd Fowler, a Board-certified family practitioner, who noted that she had complaints of right shoulder pain. Dr. Fowler provided results on examination and diagnosed a full thickness tear of the right rotator cuff. Appellant was also seen by Dr. Timothy Jenkins, an orthopedic surgeon, that day with regards to her magnetic resonance imaging (MRI) scan. They discussed her history of shoulder problems and noted that the condition could have developed over time with repetitive lifting and above shoulder activities on the right, especially since she was right handed. A March 10, 2014 report of an MRI scan by Dr. Donald Reynolds, an osteopath, diagnosed a full thickness tear of the distal supraspinatous tendon. Appellant also submitted reports dated January 9 and March 5, 2014 from a physician's assistant regarding her right shoulder treatment.

By decision dated June 3, 2014, OWCP denied appellant's claim. It accepted her work activities but found that the medical evidence was insufficient to establish causal relationship.

On June 30, 2014 appellant requested reconsideration. She resubmitted the March 26, 2014 report from Dr. Fowler and the March 5, 2014 report of that physician's assistant.

In a decision dated July 8, 2014, OWCP determined that appellant's reconsideration request was insufficient to warrant further review of the merits of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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.⁴

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a

² *Id.* at §§ 8101-8193.

³ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ *See Robert G. Morris*, 48 ECAB 238 (1996).

causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁷

ANALYSIS -- ISSUE 1

Appellant filed a claim for compensation alleging a right rotator cuff tear causally related to 14 years of casing and loading mail in her federal employment. OWCP did not contest that she engaged in casing and loading mail. Dr. Fowler provided a diagnosis of a full thickness tear of the right rotator cuff in his March 26, 2014 report, based on a March 10, 2014 MRI scan.

To establish her claim, appellant must submit probative medical evidence from a physician on the issue of causal relationship between the diagnosed right rotator cuff tear and the identified employment factors. Dr. Fowler did not provide a complete factual and medical background or an opinion on causal relationship based on sound medical rationale explaining how the diagnosed condition was related to the specific employment factors.

Dr. Fowler generally opined that appellant's shoulder problems could have developed from repetitive lifting and above shoulder activities. He did not provide adequate rationale explaining how her specific work duties caused or contributed to her diagnosed shoulder conditions. At best Dr. Fowler's opinion is speculative. He did not provide a rationalized opinion regarding causal relationship on whether the casing and loading of mail in appellant's federal employment resulted in her torn right rotator cuff.

As to reports from a physician's assistant, they are of no probative medical value. Medical evidence must be from a physician as defined under FECA. A physician's assistant is not considered a physician under 5 U.S.C. § 8101(2).⁸

The Board finds that appellant did not meet her burden of proof. The record does not contain a rationalized medical opinion on causal relationship between her rotator cuff tear and employment activities. On appeal, appellant states that she is unable to work and needs right shoulder surgery. As noted, she did not submit sufficient medical evidence to establish her claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *George H. Clark*, 56 ECAB 162 (2004).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁹ OWCP regulations at 20 C.F.R. § 10.606(b)(3) 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 OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.”¹⁰ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.¹¹

ANALYSIS -- ISSUE 2

Appellant submitted a request for reconsideration on June 30, 2014. She did not contend that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. The denial of appellant’s claim was based on the lack of probative medical evidence on the issue of causal relationship. Appellant did not submit any new and relevant medical evidence. She resubmitted reports previously of record and considered by OWCP. Evidence that repeats or duplicates evidence already of record does not constitute a basis for reopening a case for merit review.¹²

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

CONCLUSION

The Board finds that appellant did not establish a right shoulder injury casually related to factors of her federal employment. The Board further finds that OWCP properly denied appellant’s application for reconsideration without merit review of the claim.

⁹ 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”).

¹⁰ 20 C.F.R. § 10.606(b)(3).

¹¹ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹² *See Roger W. Robinson*, 54 ECAB 846 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 8 and June 3, 2014 are affirmed.

Issued: December 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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