

informed appellant of the type evidence needed to support her claim and requested that the employing establishment submit a response.

Appellant submitted a statement in which she alleged that the repetitive motion required in casing mail caused her left shoulder injury, noting that she had previously sustained a similar right shoulder injury. She also submitted a treatment note dated September 29, 2003 in which Dr. B.T. Wright, Jr. noted that appellant was seen for the first time that day and had a history of a work-related right shoulder injury in 2000. He provided findings regarding her right shoulder and recommended a right shoulder magnetic resonance imaging (MRI) scan.

By decision dated December 8, 2003, the Office denied the claim, finding that the only medical evidence submitted referred to appellant's right shoulder. In a statement dated December 26, 2003, Anil Kumar, SDO Primary at the employing establishment, advised that appellant had been on full-time light duty for three years and only cased mail. On March 15, 2004 appellant requested reconsideration and submitted an MRI scan of the left shoulder which was read by Dr. Lillian W. Orson, a Board-certified radiologist, as showing moderate supraspinatus tendinosis with low grade bursal-sided low grade tear without high grade partial or full thickness disruption and moderate fluid in the subacromial/subdeltoid bursa compatible with bursitis. In a decision dated June 15, 2004, the Office denied merit review, noting that appellant did not offer a new legal argument and finding the medical evidence submitted irrelevant as it did not contain an opinion regarding the cause of the diagnosed condition and any relationship between it and the claimed work factors.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.² Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(a).

⁴ 20 C.F.R. § 10.608(b)(1) and (2).

⁵ 20 C.F.R. § 10.608(b).

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated June 15, 2004 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated December 8, 2003, and the filing of her appeal with the Board on January 25, 2005, the Board lacks jurisdiction to review the merits of her claim.⁶

With her March 15, 2004 reconsideration request, appellant submitted no new argument. She thus 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 to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁷

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant submitted a February 4, 2004 MRI scan report of the left shoulder in which Dr. Osborn noted findings of a low grade tear, the Board finds that this report contains no findings relevant to whether appellant established that her left shoulder condition was caused by employment factors as it contains no opinion regarding the cause of the left shoulder findings.⁸ Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.⁹

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 501.3(d)(2).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000). Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994). Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ The Board notes that appellant submitted additional evidence to the Office subsequent to the June 15, 2004 decision. The Board cannot consider this evidence, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2004 be affirmed.

Issued: June 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member