

repetitive movements he performed while operating a flat sorting machine and by activities he performed as a custodian.

By decision dated December 22, 2005, the Office denied appellant's claim because the evidence of record was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act.

On January 9, 2007 appellant requested reconsideration.

Appellant submitted several medical documents dating from 1998 to 1999 which pertained to a previous claim. He also submitted a March 28, 2006 report from Dr. Ralph Inabnit, an osteopathic physician, who stated that he had treated appellant since the year 2000. Dr. Inabnit noted that appellant had undergone two surgical repairs for repeat tear of the right shoulder. A report dated September 26, 2006 signed by Dr. Brian J. Cole, a Board-certified orthopedic surgeon, reviewed appellant's medical history and noted that appellant had undergone revision of the rotator cuff repair on March 1, 2006. Dr. Cole opined that appellant's employment often involved performing repetitive tasks. He opined that appellant's condition was causally related to his employment, "vis-à-vis aggravation of a preexisting condition." In a report dated November 30, 2006, Dr. Stephen Mitros, an orthopedic surgeon, noted that appellant had a previous 1998 claim which was accepted for right shoulder injury. He related appellant's statements that since the year 2005 his work activities have exacerbated his shoulder condition.

By decision dated February 22, 2007, the Office modified its December 22, 2005 decision to reflect that appellant sustained a diagnosed condition, a torn rotator cuff, and that appellant had identified employment factors which he believed caused his torn rotator cuff. However, it denied appellant's claim because he had not established the existence of a causal relationship between his torn right rotator cuff and the identified employment factors.

On August 24, 2007 appellant requested reconsideration.

Appellant submitted evidence in support of his request which included a report dated March 20, 2007 in which Dr. Cole reported a history of injury, findings upon examination and diagnosed appellant with "persistent right shoulder of unknown etiology one[-]year status post double row revision rotator cuff repair."

By decision dated November 29, 2007, the Office denied modification of its February 22, 2007 decision.

On November 22, 2008 appellant requested reconsideration.

Appellant submitted copies of reports, dated September 26, 2006 and March 20, 2007, signed by Dr. Cole.

By decision dated December 12, 2008, the Office denied reconsideration of its November 29, 2007 decision because the only evidence he submitted in support of his

reconsideration request were copies of reports that were already of record and addressed by the Office in its prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² 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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ 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.⁵

ANALYSIS

Appellant's November 22, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The Board also finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. Appellant submitted reports, dated September 26, 2006 and March 20, 2007, signed by Dr. Cole, an orthopedic surgeon. 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.⁶ Appellant had previously submitted these reports and the record reflects they were addressed by the Office in its prior decision.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or constituted relevant and pertinent new evidence not previously considered by the Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.⁷

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

⁷ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board