

On January 29, 2003 appellant, then a 39-year-old transportation security screener, was injured when she lifted heavy luggage onto a table. The Office accepted her claim for right

shoulder tendinitis, cervical sprain, lumbar sprain and temporary aggravation of cervical spondylosis. Appellant stopped working on May 9, 2003, did not return and received compensation for temporary total disability.

In a December 6, 2007 letter, the Office requested that appellant submit a physician's medical report regarding her current condition to determine whether she was entitled to compensation benefits for continuing disability.

In a December 12, 2007 report, Dr. Rebecca Holdren, an attending physician and a Board-certified physiatrist, noted that appellant complained of cervical and lumbar pain and right shoulder symptoms beginning approximately six years prior. She examined appellant's upper right extremity and observed limited external rotation of the shoulder, generalized severe tenderness of the shoulder girdle, generalized moderate tenderness of the proximal upper arm and generalized severe crepitation. Dr. Holdren reported right upper paraspinal muscle tenderness and restricted lateral bending of the left posterior head and neck. A July 27, 2004 magnetic resonance imaging (MRI) scan revealed degenerative spondylotic changes involving the left neural foramen at the C5-6 and C6-7 regions and minimal broad bulging at the T7-8 and T8-9 discs. Dr. Holdren diagnosed reflex sympathetic dystrophy and rotator cuff syndrome of the right shoulder and displacement of cervical and thoracic intervertebral discs. She stated that appellant was not working and remained "totally disabled due to work injury."

A February 14, 2008 evaluation of appellant's right shoulder MRI scan from Drs. Irene Darocha and Joel D. Swartz, a Board-certified diagnostic radiologists, showed mild thickening of and intermediate signal intensity distally within the supraspinatus muscle tendon, indicative of tendinosis, and a one-centimeter lesion at the humeral head in the region of the epiphyseal scar having the appearance of an enchondroma.

In an April 3, 2008 report, Dr. Holdren noted that appellant's right shoulder pain radiated down to her arm and wrist and appellant had trouble lifting "even the lightest items." She additionally diagnosed drug dependence and commented that a nurse practitioner suggested supraspinatus tendinosis on March 5, 2008.

In an April 29, 2008 letter, the Office referred appellant for a second opinion examination to Dr. James Bethea, a Board-certified orthopedic surgeon. In a May 30, 2008 report, Dr. Bethea detailed that she complained of pain radiating to her right middle, ring and little fingers, a winged scapula and difficulty lifting with her upper right extremity. Anteroposterior and lateral x-rays exhibited disc space narrowing at the C5-6 and C6-7 vertebrae, which he opined was possibly age related. Dr. Bethea also reviewed appellant's prior MRI scan results. On physical examination, he noted uncomfortable lateral rotation at the cervical spine and limited flexion, extension, lateral rotation and lateral bending at the lumbar spine due to pain. Dr. Bethea further observed discomfort caused by the apprehension maneuver, impingement test and cross body adduction. He diagnosed cervical and lumbar sprains and right shoulder tendinitis, stating that appellant's condition evolved into a chronic pain status "because of her injury at work in 2003" that was "out of proportion to the pathology seen on the diagnostic imaging." Dr. Bethea stated that her condition was not due to a preexisting injury. He concluded that appellant could not resume her regular position as a transportation security screener, which entailed lifting and

prolonged standing, but found her capable of performing sedentary work for a maximum of four hours a day.

On July 18, 2008 the Office notified appellant that her case would be referred to a referee physician to resolve a conflict in medical opinion between Dr. Holdren who supported total disability and Dr. Bethea, who found that she was able to return to restricted duty.

In an October 9, 2008 report, Dr. Holdren reiterated that appellant was permanently disabled.

In an October 29, 2008 letter, the Office referred appellant for a referee examination to Dr. John P. Evans, a Board-certified orthopedic surgeon. In a November 24, 2008 report, Dr. Evans commented that she complained of pain in the right upper extremity, low back and leg, numbness of the hand and tenderness in the right low back. He reviewed appellants past x-rays and MRI scans and noted cervical spine disc space narrowing, thoracic disc bulging, tendinosis of the right biceps tendon and an enchondroma in the right scapula. Dr. Evans examined her and observed tenderness and limited range of motion (ROM) of the lumbar spine, pain over the trochanteric bursa and positive supine straight leg raise tests for both legs. In addition, he observed a slight winging of the right scapula, painful upright passive and active ROM of the right elbow, global tenderness of the right shoulder, neck, trapezium and humerus areas and limited passive flexion, abduction and internal rotation of the right shoulder. Dr. Evans diagnosed chronic right shoulder and neck pain and ongoing narcotic dependence, opining that the chronic pain syndrome was separate and unrelated to the January 29, 2003 incident. He opined that the accepted conditions had resolved noting that objective findings did not support the symptoms presented. Dr. Evans found no disability due to the employment injury and opined that she could perform some work since her narcotic medication allowed her to carry out some of her activities of daily living.

By notice dated January 8, 2009, the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Evans' November 24, 2008 report established that she no longer had residuals of her January 29, 2003 employment injury.

In a letter received by the Office on February 2, 2009, appellant disagreed with the proposed termination action, contending that she had residuals of her work injury. She attached January 16, 2009 notes from Dr. Lesle Long, a Board-certified internist, and a pharmacist regarding her reliance on pain medication and a January 26, 2009 work capacity evaluation from Dr. Holdren noting that appellant reached maximum medical improvement and recommending a gradual return to indefinite restricted duty.

By decision dated February 19, 2009, the Office terminated appellant's compensation benefits effective February 20, 2009.

Appellant subsequently submitted a May 1, 2008 nurse practitioner's report signed by Dr. Holdren. She exhibited stable tenderness of the right upper paraspinal muscle and restricted rotation of the right shoulder and reached maximum medical improvement.

In a January 13, 2010 report, Dr. Stanley Golovac, a Board-certified anesthesiologist, reviewed the history of appellant's cervical, lumbar and right shoulder condition and medical

treatment, pointing out Dr. Bethea's opinion that her current state was secondary to the January 29, 2003 incident. He reviewed her MRI scans and noted disc bulging, moderate facet arthrosis and mild spondylosis of the cervical vertebrae, moderate spondylosis of the lumbar vertebrae and moderate spondylosis, mild disc space narrowing and protrusion of the lumbosacral joint. Dr. Golovac advised that they did not disclose any significant pathology that obstructed appellant from working. He further commented that she had good mechanical function in all peripheral joints, intact push-and-pull movement of the upper and lower extremities and possible mild myofascial defused pain secondary to inactivity and deconditioning since 2003. Dr. Golovac recommended that appellant refrain from working until diagnostic tests confirmed the etiology of her pain.

Appellant also provided a family nurse practitioner's February 5 and March 5, 2009 notes, a copy of Dr. Holdren's April 3, 2008 report and Social Security Administration (SSA) earnings data.

Appellant requested reconsideration on February 10, 2010. She submitted a January 22, 2010 SSA disability benefit application and two factual statements, which detailed her continuing right shoulder, neck and lower back pain as well as professional and financial difficulties relating to her new position with the employing establishment after returning to work on June 3, 2009. Dr. Golovac provided January 7 and 11, 2010 notes stating that appellant did not reach maximum medical improvement, was incapable of performing regular work and should be placed on restricted duty until a proper diagnosis was rendered.

By decision dated March 2, 2010, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant review of the February 19, 2009 decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that the evidence or argument submitted by a claimant must either: (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.² Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

¹ 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

² *E.K.*, 61 ECAB ____ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

³ *L.D.*, 59 ECAB 648 (2008). *See id.* at § 10.608(b).

ANALYSIS

The Office's February 19, 2009 decision terminated appellant's medical and wage-loss benefits on the grounds that Dr. Evans' November 24, 2008 report established that her accepted cervical and lumbar sprain and temporary aggravation of cervical spondylosis were resolved and that her current condition was not related to the January 29, 2003 work injury. Appellant requested reconsideration on February 10, 2010 and argued that she continued to feel pain in her right shoulder, neck and lower back and encountered numerous professional and financial difficulties after returning to work on June 3, 2009. These arguments, however, do not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.⁴

Appellant also submitted new medical evidence. In a January 13, 2010 report, Dr. Golovac evaluated appellant's injury history and earlier diagnostic examinations, noting that Dr. Bethea connected the January 29, 2003 incident to her current cervical, lumbar and right shoulder pain while the MRI scans did not indicate a significant pathology that obstructed her from working. Dr. Golovac did not address the underlying issue of whether she had any continuing residuals or disability causally related to the work injury. He merely recommended that appellant refrain from working until diagnostic tests confirmed the etiology. Dr. Golovac reiterated that appellant was disabled in his January 7 and 11, 2010 notes. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ The underlying issue here is whether appellant sustained residuals of her January 29, 2003 employment injury. Since Dr. Golovac offered no opinion on the matter, his records were irrelevant and insufficient to warrant reconsideration.

Neither of Dr. Holdren's reports constitutes a basis for reopening appellant's case. The May 1, 2008 report did not discuss whether the events of January 29, 2003 caused or aggravated her current condition. The April 3, 2008 report was previously considered as it was of record before issuance of its February 19, 2009 decision.⁶

The nurse practitioner's February 5 and March 5, 2009 notes do not constitute relevant medical evidence as a nurse practitioner is not a physician as defined under the Act.⁷

Appellant also submitted several SSA documents to demonstrate her disability status. The Board has held that findings of disability by the SSA do not establish findings of disability under the Act for the purposes of receiving workers' compensation, given that different standards

⁴ See *Charles A. Jackson*, 53 ECAB 671 (2002) at n.14; *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

⁵ *Mary Lou Barragy*, 46 ECAB 781 (1995).

⁶ *Edward W. Malaniak*, 51 ECB 279 (2000) (submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case).

⁷ 5 U.S.C. §§ 8101(2); *L.D.*, *supra* note 3. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

of medical proof are utilized in making these determinations.⁸ Therefore, these documents are not relevant to the underlying issue of whether appellant continued to have disability or residuals of her January 29, 2003 employment injury.

Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim.

On appeal, appellant argues that the Office's decision was contrary to fact and law. As noted, she did not submit sufficient evidence or argument to warrant reopening of the February 19, 2009 decision under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).