

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANNA SHAMUS-DORROH and U.S. POSTAL SERVICE,  
POST OFFICE, Winter Park, FL

*Docket No. 03-529; Submitted on the Record;  
Issued August 11, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 59-year-old city carrier, filed a claim for benefits on February 9, 1998, alleging that on September 11, 1997 she injured her neck and right shoulder while lifting tubs of mail. The Office accepted the claim for cervical strain and right shoulder strain.

By letter dated June 11, 1999, the Office advised appellant that it was reopening her claim for further development based on new evidence from the employing establishment which indicated that she was not actually working at 2:00 p.m. on September 11, 1997, the date she claimed that she sustained her traumatic injury. The Office also asked appellant to submit medical evidence supporting her claim for continuing compensation from October 23, 1997 through November 6, 1998.

Appellant submitted treatment notes dated May 18, July 6 and August 11, 1999 from Dr. Norton M. Baker, a Board-certified orthopedic surgeon and appellant's treating physician. In these reports, he noted appellant's recurrent complaints of pain in her neck and right shoulder and recommended pain medication, physical therapy, wearing a cervical collar and limiting her activity at work. In a report dated August 18, 1999, Dr. Baker stated that appellant was not working recently because she had injured her shoulder at work when she caught her elbow on a door jamb. He noted acute swelling with loss of motion in the right shoulder and opined that she probably had a rotator cuff/oft tissue sprain. Dr. Baker considered this a new injury overlying her old problem of rotator cuff pathology.

By decision dated October 20, 1999, the Office denied appellant's claim for disability compensation as of October 23, 1997 and continuing. The Office stated that appellant provided an inaccurate factual history regarding the work-related origin of her claimed condition and

failed to submit sufficient medical evidence indicating that the claimed medical condition was causally related to factors or incidents of employment, as requested.<sup>1</sup>

By letter dated October 17, 2000, appellant's attorney requested reconsideration. Appellant submitted a January 9, 2001 report from Dr. Baker, who advised that she was experiencing persistent pain in her right shoulder. He stated:

"The last time [appellant] was seen in my office, the stage [that] her shoulder had progressed to would definitely indicate that she would need operative treatment. I believe [that] she will need arthroscopic or open surgery of the right shoulder and a term of postoperative rehabilitation. This treatment in my opinion will help [appellant] to get back to the work force. Her ability to work has been limited by the on the job accidents and I think with her history and examination seen over the years that her problem with the right shoulder is a result of the work injuries. [Appellant] is not a [m]aximum [m]edical [i]mprovement and will not be until she has some form of surgery."

In a report dated October 22, 1999, Dr. Richard L. Shure, a Board-certified orthopedic surgeon, noted appellant's history of pain and discomfort in her right shoulder and opined that the major contributing cause of her current right shoulder problems is related to her "workers compensation" right shoulder injuries which began in 1992 and not to an episode where she bumped her right elbow into a door on August 13, 1999.

By decision dated November 5, 2002, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>2</sup> As appellant filed her request for an appeal on December 16, 2002, the only decision before the Board is the November 5, 2002 decision denying her request for a merit review.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.606(b), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> Evidence that repeats

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<sup>1</sup> The Office further stated that, "since your claim has been changed to an occupational disease claim, you are not entitled to [continuation] of [p]ay (COP). If you received COP, you will be given an opportunity to charge the time to sick or annual leave."

<sup>2</sup> 20 C.F.R. §§ 501.2©, 501.3(d)(2).

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

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>

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and her request did not contain any new and relevant medical evidence for the Office to review. The evidence appellant submitted was either previously considered and rejected by the Office in a prior decision or is not pertinent to the issue on appeal. The report from Dr. Baker is cumulative and repetitive of evidence which was considered by the Office in its previous decision. The reports from both Drs. Baker and Shure state in summary fashion that appellant's current condition was caused by her employment, but, upon limited review, do not contain evidence sufficient to warrant reopening the case for a merit review. Taken together, the medical evidence that appellant submitted with her request for reconsideration is not pertinent to the issue of whether her claimed condition is causally related to factors or incidents of her employment. Additionally, appellant's letter requesting reconsideration failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore, affirms the Office's November 5, 2002 decision.

The decision of the Office of Workers' Compensation Programs dated November 5, 2002 is hereby affirmed.

Dated, Washington, DC  
August 11, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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