

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN K. DELEON and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, Des Moines, IA

*Docket No. 03-1825; Submitted on the Record;
Issued August 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right shoulder or neck condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further reconsideration of the merits of her claim.

On October 22, 2002 appellant, then a 56-year-old senior case technician, filed a claim alleging that she sustained right shoulder and neck conditions due to repetitive motion required by her job. She indicated that she had performed such repetitive duties as lifting large boxes and files, reaching over her shoulder to file mail and date-stamping documents.

By decision dated January 13, 2003, the Office denied appellant's claim on the grounds that she did not establish the fact of injury as she had not adequately identified the employment factors which she believed caused her claimed condition. By decision dated March 7, 2003, the Office modified its January 13, 2003 decision to reflect that appellant had established the fact of injury, but that she had not submitted sufficient medical evidence to establish that she sustained an injury due to the accepted employment factors. On April 7, 2003 appellant requested reconsideration of her claim and, by decision dated June 25, 2003, the Office denied her reconsideration request without reviewing the merits of her claim.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right shoulder or neck condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was

¹ 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁴

In support of her claim that she sustained a right shoulder and neck condition in the performance of duty, appellant submitted an October 24, 2002 report and an October 24, 2002 note of Dr. Kary R. Schulte, an attending Board-certified orthopedic surgeon. In his October 24, 2002 report, Dr. Schulte noted that appellant reported engaging in repetitive lifting at work. He diagnosed cuff tendinitis of the right shoulder and stated that appellant could continue her regular work without restriction. In his October 24, 2002 note, Dr. Schulte diagnosed cuff tendinitis of the right shoulder and recommended that appellant engage in physical therapy. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁵ Dr. Schulte did not provide any indication that appellant's right shoulder problems were due to employment factors. Appellant also submitted reports from her physical therapy, but these documents would not constitute medical evidence. Physical therapists are not physicians under the Act and are not qualified to provide the necessary medical evidence to meet a claimant's burden of proof.⁶

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ *Jane A. White*, 34 ECAB 515, 518-19 (1983).

For these reasons, appellant did not establish that she sustained a right shoulder or neck condition in the performance of duty.

The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.⁸ 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.⁹ 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.¹⁰

In connection with her April 7, 2003 reconsideration request, appellant indicated that she would submit a "causation letter" if the Office requested her to do so. She did not submit any new medical evidence with her reconsideration request. Appellant submitted a copy of Dr. Schulte's October 24, 2002 report, but this report had already been submitted by her and considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹

In the present case, appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its March 7, 2003 decision under section 8128(a) of the Act, because she did not to 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 submitted relevant and pertinent new evidence not previously considered by the Office.

⁷ 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).

⁸ 20 C.F.R. §§ 10.606(b)(2).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The June 25, March 7 and January 13, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 20, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member