

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 28, 2000 appellant, then a 44-year-old mail handler, filed a traumatic injury claim alleging that on November 23, 2000 she experienced chest pain when connecting a over-the-road (OTR) container to a tow motor. She stopped work on November 24, 2000 and returned to work on November 28, 2000. On December 7, 2000 the employing establishment offered appellant a light-duty mail handler position, which she accepted.

By letter dated March 28, 2001, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the November 23, 2000 incident caused or contributed to her claimed condition.

Appellant submitted a report from Dr. Gregg A. Bendrick, a specialist in emergency medicine, dated April 4, 2001, which noted her complaints of chest pain when she was pulling a machine at work. He noted that he was unsure of the cause of appellant's condition and opined that, if the etiology of her condition was chest wall pain or costochondritis, it would be work related; however, if the etiology of appellant's condition was the central nervous system, it would not be work related.

In a decision dated May 8, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by the incident of November 23, 2000.

Appellant requested an oral hearing, which was held on November 6, 2001. She submitted medical reports from Dr. Joseph O. Rauchwerk, a Board-certified orthopedist, who initially treated appellant on June 25, 2001 for shoulder cervical complaints. Dr. Rauchwerk noted that x-rays revealed spondylosis at C5-6. On July 18, 2001 he noted that a magnetic resonance imaging (MRI) scan of the cervical spine showed multilevel disc derangement and a shoulder impingement syndrome. He recommended that she return to light-duty work. On July 25, 2001 Dr. Rauchwerk indicated that appellant's cervical and shoulder condition had been aggravated by her injury at work. In a decision dated January 31, 2002, the hearing representative affirmed the Office's May 8, 2001 decision. She found that Dr. Rauchwerk did not provide a rationalized opinion to support his opinion on causal relationship.

On January 28, 2003 appellant requested reconsideration. She resubmitted Dr. Rauchwerk's earlier reports and provided two new reports from him. In an August 22, 2001 report, he diagnosed shoulder impingement and noted that appellant was scheduled to have right shoulder surgery and was experiencing similar symptoms in the left shoulder. His November 14,

2001 report noted that appellant was treated for a job-related injury occurring on November 23, 2000 which caused neck, chest, scapular and right shoulder pain. Dr. Rauchwerk advised that appellant could continue with light duty.

Appellant also submitted reports from Dr. Bendrick dated April 2 to June 8, 2001. He noted that she remained symptomatic. In a report dated December 3, 2002, Dr. Kenneth N. Adatto, a Board-certified orthopedist, noted appellant's continued complaints of pain in the cervical, right arm and thoracic areas. He diagnosed costochondritis, cervical disc displacement, spondylosis, shoulder impingement and rotator cuff syndrome and recommended that she return to regular duty.

In a decision dated February 10, 2003, the Office denied appellant's request for reconsideration. The Office found that appellant had not submitted evidence relevant to the issue in the case and the evidence was insufficient to warrant further merit review of the prior decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.³ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant's January 28, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Consequently, she 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board finds that the evidence submitted on

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

reconsideration is not relevant and pertinent new evidence. In support of her request for reconsideration, appellant submitted reports from Dr. Rauchwerk dated June 25 to November 30, 2001. However, this evidence was duplicative of evidence already contained in the record and was previously considered by the hearing representative.⁶ Dr. Rauchwerk's reports dated August 22 and November 14, 2001 noted that appellant was treated for a job-related injury occurring on November 23, 2000 which caused neck, chest, scapular and right shoulder pain. However, these reports are cumulative in relation to his June 25, July 18 and 25 and November 30, 2001 reports, which state without any rationale, that appellant's neck, chest, scapular and right shoulder conditions were work related. Other medical evidence from Dr. Bendrick dated April 2 to June 8, 2001 are also duplicative of his April 4, 2001 report and do not specifically address whether appellant sustained a work-related injury on November 23, 2000.

Dr. Adatto's report of December 3, 2002 noted appellant's complaints of pain in the cervical, right arm and thoracic areas and diagnosed costochondritis, cervical disc displacement, spondylosis, shoulder impingement and rotator cuff syndrome.

However, he did not address whether appellant sustained a work-related injury on November 23, 2000. Accordingly she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied appellant's January 28, 2003 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's January 28, 2003 request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ 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. See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member