

repetition. Appellant indicated that she first realized that her condition was caused or aggravated by her employment on January 10, 2003. She has not worked since February 25, 2003.

In a March 11, 2003 letter, the Office advised appellant of the factual and medical evidence required to establish her claim for compensation. The Office requested that she submit a statement describing in detail the work factors that she felt had attributed to her alleged medical condition. Appellant was informed that it was her burden of proof to establish entitlement to compensation, which required her to submit a reasoned medical opinion addressing how her alleged shoulder condition was caused or aggravated by work factors.

In response, appellant prepared a statement on March 15, 2003 relating that she had first injured her forearm in 1991 while working at the employing establishment. She indicated that to ease the pain in her forearm she was forced to hold her forearm close to her body and that she developed scar tissue in her shoulder from holding her forearm in that manner. Appellant also attributed her shoulder condition to “repeated motions over my head for 19 plus years.” She stated that she was unable to engage in sports or physical exercise involving her arms and that she could only use the computer for up to 45 minutes per day. Appellant alleged that the pain in her arms and shoulders was relieved whenever she was off work for significant periods of time.

In a decision dated May 2, 2003, the Office denied compensation on the grounds that appellant failed to establish fact of injury because there was no medical evidence to establish a causal relationship between her shoulder condition and the alleged work factors.¹ She subsequently requested reconsideration by letter dated June 2, 2003. In an August 13, 2003 decision, the Office denied appellant’s reconsideration request finding that it was insufficient to warrant a merit review.²

LEGAL PRECEDENT - Issue 1

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 diagnosed condition is causally related to the identified employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

¹ The Office noted that appellant had referenced a prior claim for a work-related forearm injury in 1991 under file number A13-958879 and that the prior claim had been administratively closed in 1997. The instant claim was adjudicated under file number A13-2072952.

² On August 18, 2003 the employing establishment submitted an investigative memorandum along with 16 exhibits for consideration by the Office which included medical evidence. The Board, however, does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision on August 13, 2003. See 20 C.F.R. § 501.2(c).

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.³

ANALYSIS - Issue 1

In this case, appellant alleged that she developed a left shoulder condition as a consequence of a 1991 work injury and that her shoulder condition was further caused or aggravated by work activities. Appellant, however, did not provide any medical evidence, as requested by the Office, to support her claim for compensation. She did not provide a reasoned medical opinion from her treating physician that described the nature of her diagnosed condition and its relation to the identified work factors.

The Board has held that the employee has the burden of proving that any specific condition for which compensation is claimed is causally related to the employment injury. This burden includes the necessity of submitting medical opinion evidence, based on a proper medical and factual background, establishing a causal relationship between the diagnosed condition and the work factors or employment injury identified by the employee.⁴ Because appellant did not provide any medical evidence, much less a reasoned medical opinion, to support that she suffers from a bilateral shoulder caused or aggravated by work factors, the Board finds that she failed to satisfy her burden of proof.

LEGAL PRECEDENT - Issue 2

Section 8128(a) of the Federal Employees' Compensation Act⁵ vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁶ Office regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁷ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸ 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.⁹ Evidence that does not

³ *Solomon Polen*, 51 ECAB 341 (2000); *James D. Carter*, 43 ECAB 113 (1991).

⁴ *See William F. Gay*, 50 ECAB 276 (1999); *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁵ 5 U.S.C. § 8101 *et seq*; *see* 8128(a).

⁶ *See Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ 20 C.F.R. § 10.606(b)(2) (1999).

⁸ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁹ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

address the particular issue involved also does not constitute a basis for reopening a case.¹⁰ Where a claimant fails to submit relevant evidence not previously of record, or fails to advance legal contentions not previously considered by the Office, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.¹¹

ANALYSIS - Issue 2

Appellant's letter on reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. She also failed to submit any new and relevant evidence on reconsideration to support her claim for compensation. Consequently, the Board concludes that appellant's reconsideration request failed to satisfy the requirements of section 10.606(b)(2) and, therefore, she was not entitled to have her case reopened for a merit review of her claim.

CONCLUSION

The Board finds that appellant failed to satisfy her burden of proof to establish that she sustained an injury due to factors of her federal employment. The Board also finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 13 and May 2, 2003 are affirmed.

Issued: December 22, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Kevin M. Fatzer, supra* note 10; *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹¹ *Edward W. Malaniak, supra* note 8; *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990).