

a nonindustrial-related condition. In a March 28, 2001 form report, Dr. Prem Parmar, an orthopedic surgeon, diagnosed left shoulder rotator cuff impingement and acromioclavicular (AC) joint arthritis and noted that appellant had degenerative changes in her AC joint. He also checked “yes” that the work was related to appellant’s employment.

The record also contains a January 29, 2001 report from Dr. Parmar that states appellant was seen for consultation related to her left shoulder that had been giving her problems for about a month. Dr. Parmar stated that appellant did not recall a traumatic or inciting incident that caused the pain. He stated that the pain was located in her shoulder but radiated to the back of her neck and down into her hand and produced numbness or tingling in her hand. According to Dr. Parmar, appellant did not indicate a history of shoulder problems. He diagnosed an impingement and AC joint arthritis. On April 20, 2001 Dr. Parmar performed a left shoulder arthroscopy and arthroscopic subacromial decompression and left arthroscopic Mumford distal clavicle excision. His postoperative diagnosis was left shoulder impingement and left acromioclavicular joint pain. In a May 17, 2001 letter, the Office informed appellant that more information was needed to develop her claim. Appellant responded indicating that at the time of the March 28, 2001 incident her left shoulder felt as if it was out of place and was very painful which she attributed to overuse of the shoulder. Appellant also submitted several notes from Dr. Parmar that indicated appellant should perform light duty.

In a July 9, 2001 decision, the Office denied appellant’s claim finding that the medical evidence did not establish a causal relationship between appellant’s medical condition and her employment. Appellant underwent a debridement surgery in October 2001. Appellant requested reconsideration and submitted progress notes from Dr. Parmar that described appellant’s status and treatment but did not discuss the proximate cause of the condition. Appellant also submitted an April 5, 2002 report from Dr. Parmar who stated that appellant had a long and complicated course of shoulder problems dating back to December 2000 and noted that appellant’s work involved repetitive overhead motion with her shoulders which he believed led to her shoulder impingement. He added that activities that contributed to this were wiping and cleaning of treadmills and other type of weightlifting machinery that was probably done with her arms at the level of her horizon or higher. Dr. Parmar stated that these types of activities done over a long period of time could cause some type of tendinitis/impingement. Dr. Parmar also stated that appellant had Type II acromion and because of that she was more prone to developing shoulder problems and she should be retrained because she will likely never be able to do repetitive work again.

In a May 9, 2002 decision, the Office denied modification finding that the medical evidence insufficient on the issue of causal relationship. The Office also noted that the evidence appellant presented suggested the claim was more likely an occupational disease claim, but the record lacked sufficient information on appellant’s work duties to establish entitlement as an occupational disease.¹

In an August 6, 2003 letter, appellant requested reconsideration and later submitted an August 7, 2003 report from Dr. Parmar that reviewed her medical history and restrictions and

¹ The Office reissued this decision on August 6, 2002 as appellant had not received the May 9, 2002 decision.

stated that appellant's left shoulder pain was secondary to arthrofibrosis that developed after her initial treatment for her impingement debridement. In an August 12, 2003 decision, the Office denied appellant a merit review finding the medical evidence appellant submitted was repetitious of the evidence already in the record.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ 20 C.F.R. § 10.608(b) states that, if the request for reconsideration fails to meet at least one of the above standards, the Office will deny the request for reconsideration without merit review of the claim.

The Board has held that the submission of evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁴ The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁶

ANALYSIS

As noted in the jurisdictional statement, the only decision before the Board on this appeal is the Office's August 12, 2003 decision denying appellant's request for a review on the merits of its August 6, 2002 decision. Because more than one year has elapsed between the issuance of the Office's August 6, 2002 decision and November 6, 2003, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the August 6, 2002 decision.⁷

In the present case, the record does not establish that the August 12, 2003 decision improperly denied appellant's request for a review on the merits of its August 6, 2002 decision under section 8128(a) of the Act. Appellant did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

² 5 U.S.C. § 8101 *et seq.* 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁶ *John F. Critz*, 44 ECAB 788, 794 (1993).

⁷ *See* 20 C.F.R. § 501.3(d)(2).

The underlying merit issue in the case is whether or not appellant's left shoulder condition was causally related to her employment. Appellant submitted an August 7, 2003 report from Dr. Parmar that reviewed her medical history and restrictions and stated that appellant's left shoulder pain was secondary to arthrofibrosis that developed after her initial treatment for her impingement debridement. This report is repetitive of medical evidence already submitted from Dr. Parmar and it does not address the issue of causal relationship. While appellant may have a medical condition secondary to arthrofibrosis, the evidence does not discuss how it is related to her employment factors. Absent new medical evidence discussing the relationship between her work and her medical condition, the evidence is not sufficient to require the Office to conduct a merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member