

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**CONNIE F. BOURG, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 04-1370  
Issued: September 27, 2004**

*Appearances:*  
*Connie F. Bourg, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On April 26, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated February 27, 2004, denying her claim for a recurrence of disability and an April 9, 2004 nonmerit decision denying reconsideration of the claim. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained a recurrence of disability commencing November 6, 2003, causally related to her April 3, 2000 employment injury; and (2) whether the Office properly denied appellant's request for further review of her case on its merits under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

The Office accepted that on April 3, 2000 appellant, then a 42-year-old rural carrier, sustained cervical strain as she picked up a tray of mail. She previously underwent a cervical fusion on July 28, 1999 for a cervical disc herniation and spinal cord compression at C4-5 and C5-6. Appellant developed a pseudoarthrosis at C4-5 in April 2000 and underwent corrective

refusion surgery on May 15, 2000. Appellant returned to light duty on August 24, 2000 and she returned to regular duty on January 17, 2001.

On November 13, 2003 appellant filed a claim alleging that she sustained a recurrence of disability in her left shoulder commencing November 6, 2003. She claimed that after returning to work she continued to have problems, was diagnosed with migraine headaches and experienced radiating pain which progressively got worse "in [the] same areas as before." Appellant stopped work on November 6, 2003 and did not return.

Appellant submitted a January 7, 2004 report from Dr. William H. Kinnard, a Board-certified orthopedic surgeon, who noted that she was seen that date with complaints of pain in her left shoulder. He noted that appellant stated that lifting flats of objects on a regular basis had caused this discomfort. Dr. Kinnard noted that she had some symptoms prior to this date and had degenerative disc disease and a fusion, but was told that her neck was not the source of her pain. He noted that appellant's area of complaint was her left trapezuis muscle region without evidence of point tenderness in the glenoid humeral joint or the subacromial region and without shoulder instability. Dr. Kinnard noted that a magnetic resonance imaging (MRI) scan performed on November 20, 2003 showed evidence of thickening of the supraspinatus tendon in the rotator cuff which was indicative of a tendonopathy, but no tear. He noted that routine x-rays taken the same day show a prior fusion extending from C4 through C6 with anterior instrumentation, but both shoulders were negative.

An MRI scan of appellant's cervical spine obtained on November 20, 2003 was reported as showing status post anterior fixation C4-6 with mild spondylosis at these levels which resulted in mild narrowing of the central canal and mild spondylosis at C3-4 and C6-7 which also resulted in mild narrowing of the central canal without frank cervical canal stenosis.

In a letter dated January 7, 2004, the Office advised appellant that she needed to submit a statement addressing why she believed that her present condition was causally related to her accepted employment injury and provide medical evidence addressing causal relationship.

On January 28, 2004 appellant submitted several medical progress reports from Dr. Stefan G. Pribil, a Board-certified neurosurgeon, who noted on November 13, 2003 that she complained of left shoulder pain, left arm pain and of dropping things. She had numbness mostly in her left hand with a little on the right, mild give away in the left shoulder and weakness of the internal and external shoulder rotators and some tenderness in the superior border of the trapezuis and levator scapular insertion. Dr. Pribil diagnosed continued cervical radiculopathy and he recommended neurological testing.

Appellant also submitted a December 4, 2003 report from Dr. Pribil, who noted that an MRI scan demonstrated that above and below the fusion there was a very small one to two millimeter disc bulge which he did not believe was herniated and a partial thickness tear and/or tendonopathy of the supraspinatus tendon. Dr. Pribil opined that appellant did not need cervical surgery at that time and opined that the pain in her shoulder was not coming from the neck at that point. The November 20, 2003 MRI scan was included which showed evidence of thickening of

the supraspinatus tendon in the rotator cuff which was indicative of tendonopathy, but no evidence of a tear. Further neurological studies were recommended.

By decision dated February 27, 2004, the Office denied appellant's recurrence of disability claim, finding that the medical evidence did not establish that the condition claimed was causally related to the April 3, 2000 employment injury.

On March 15, 2004 appellant requested reconsideration of the February 27, 2004 decision. She submitted another copy of Dr. Pribil's December 4, 2003 medical progress note and an undated note from the physician stating that appellant had an extensive workup to see whether her spine was the cause of her left shoulder pain. Dr. Pribil did not believe it was, as the MRI scan revealed tendonopathy, which required orthopedic intervention.

Also submitted was another copy of Dr. Kinard's January 7, 2004 report.

By decision dated April 9, 2004, the Office denied reconsideration, finding that the evidence submitted was duplicative and repetitive.

### **LEGAL PRECEDENT -- ISSUE 1**

When an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusions.<sup>1</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant failed to submit rationalized medical evidence that establishes that her current condition is causally related to her accepted April 13, 2000 employment injury. Her condition was accepted for cervical strain. Following cervical surgery, she returned to full-duty work on January 17, 2001. Thereafter there is not a history of bridging symptoms or complaints of neck pain which relate the accepted cervical strain with her present left shoulder complaints.

On November 6, 2003 appellant claimed a recurrence of disability alleging that she had pain in her left shoulder when she lifted trays of mail. Dr. Pribil, a neurosurgeon, noted on November 13, 2003 that appellant complained of left shoulder pain, arm and hand pain and numbness and of dropping things. Following diagnostic radiology, on December 4, 2003 Dr. Pribil opined that the small disc bulging seen on the MRI scan was not a herniation which required surgery. He opined that, based upon the objective radiologic results, appellant's shoulder pain was not coming from her neck. The Board finds that Dr. Pribil negated a causal

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<sup>1</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *Carmen Gould*, 50 ECAB 504 (1999); *Jose Hernandez*, 47 ECAB 288 (1996).

relationship between appellant's left shoulder pain with her neck or cervical spine. As such, her left shoulder symptoms cannot be considered as a recurrence of her cervical strain injury. Dr. Pribil's report does not support appellant's recurrence of disability claim.

On January 7, 2004 Dr. Kinnard noted that appellant lifted things on a regular basis which caused her left shoulder complaints. He noted that her area of pain was her trapezuis, but without evidence of point tenderness in the glenoid humeral joint or subacromial region. Dr. Kinnard noted that the November 2003 MRI scans showed thickening of the supraspinatus tendon in the rotator cuff which indicated that appellant had tendonopathy. He did not relate her shoulder tendonopathy with the 2000 cervical strain injury. After finding some weakness of the internal and external shoulder rotators and some tenderness in the superior border of appellant's trapezuis and levator scapular insertion, he diagnosed cervical radiculopathy and recommended further neurological testing. This report related appellant's left shoulder pain and left upper extremity symptoms to cervical radiculopathy, which is not a condition accepted by the Office as being employment related. Dr. Kinnard noted that appellant had been told that her neck was not the source of her left shoulder pain. Therefore, the reports of Dr. Kinnard do not provide a rationalized medical opinion relating appellant's left upper extremity symptoms to her 2000 cervical strain injury.

As no further probative medical evidence was submitted, appellant has failed to submit probative medical evidence to establish her recurrence claim.

### **CONCLUSION -- ISSUE 1**

Appellant has failed to submit rationalized medical evidence sufficient to establish that she sustained a November 6, 2003 recurrence of disability, causally related to her April 3, 2000 cervical strain injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. Section 8128(a) of the Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation previously awarded; or

(2) award compensation previously refused or discontinued.”<sup>3</sup>

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<sup>2</sup> 5 U.S.C. § 8101 *et seq*; *see* 5 U.S.C. § 8128(a).

<sup>3</sup> 5 U.S.C. § 8128(a).

Although it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128,<sup>4</sup> the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case and review the case on the merits under 5 U.S.C. § 8128(a) upon request by the claimant whenever the claimant's application for review meets the specific requirements set forth in 20 C.F.R. § 10.606(b).

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, 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.<sup>5</sup> Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b) to require the Office to open her claim for further review on its merits. She did not allege that the Office erroneously applied or interpreted a point of law. Appellant also did not advance a legal argument not previously considered as she offered no argument whatsoever. Finally, she did not advance relevant or pertinent new medical evidence not previously considered by the Office, as Dr. Pribil's December 4, 2003 report and Dr. Kinnard's January 7, 2004 report both had been previously submitted to the record and considered by the Office in its February 27, 2004 decision. These reports were duplicative and repetitious of evidence of record and not sufficient to warrant reopening appellant's case for further merit review.

Appellant also submitted an undated short note from Dr. Pribil stating in total that she had an extensive workup to see whether her spine was the cause of her left shoulder pain. Dr. Pribil stated that he did not think it was, as the MRI scan revealed tendonopathy and/or a partial thickness tear, which required orthopedic intervention. This opinion had been expressed by Dr. Pribil in his previously submitted reports. The note offered no new opinion, observation or information and is repetitious of his opinion. This evidence is not sufficient to meet the requirements of 20 C.F.R. § 10.606(b) for reopening a claim for further merit review. The Office properly denied further reconsideration of appellants' case.

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<sup>4</sup> See *Charles E. White*, 24 ECAB 85, 86 (1972).

<sup>5</sup> 20 C.F.R. § 10.608(b).

<sup>6</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

**CONCLUSION -- ISSUE 2**

As appellant did not meet the requirements to warrant reconsideration of her case on its merits under 20 C.F.R. § 10.606(b), under section 10.608(b) the Office properly denied her application for further review without reopening the case or reviewing the merits of the claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 9 and February 27, 2004 are hereby affirmed.

Issued: September 27, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member