

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

SANDRA J. PALMER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Marlborough, NH, Employer**

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**Docket No. 04-1973
Issued: May 5, 2005**

Appearances:
Sandra J. Palmer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 4, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 7, 2004 wherein the Office denied appellant's claim for recurrence as it found that the evidence did not establish that appellant's current medical condition was due to her accepted injury. Appellant also appealed the Office's June 9, 2004 decision denying merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of the case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of her medical condition; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

On May 5, 1993 appellant, then a 46-year-old rural route carrier, filed a traumatic injury claim alleging that on April 3, 1993 she hurt her shoulder while delivering mail. On June 21, 1994 the Office accepted appellant's claim for right shoulder strain.

On December 4, 1994 appellant filed an occupational disease claim alleging that she sustained a ruptured disc in her neck due to repetitive movements while performing her mail duties. Appellant noted that she first became aware of the disease or illness on November 28, 1994. By letter dated April 5, 1995, the Office accepted appellant's claim for right shoulder tendinitis/chronic impingement syndrome.

On November 17, 2003 appellant filed a claim for recurrence of the April 3, 1993 employment injury. Although she did not indicate a date of recurrence, she noted that she received medical treatment on October 23, 2003. The employing establishment controverted the claim for recurrence. By letter dated April 1, 2004, the Office requested further information from appellant. In its letter, the Office noted that the date of the accepted injury was November 28, 1994. The Office asked appellant, *inter alia*, to indicate the date of the recurrence.

On March 25, 2004 appellant filed another claim for recurrence alleging that she sustained a recurrence of her April 3, 1993 employment injury. Appellant filed this claim for medical benefits only. She indicated that she has been in pain every day since the injury. Appellant noted that she stopped work on March 24, 2004. In support of her claim, appellant submitted reports dated March 4, 2004 wherein Dr. Peter D. Gibbons, a Board-certified radiologist, indicated both a right shoulder arthrogram and a magnetic resonance imaging (MRI) scan of that date indicated a full thickness rotator cuff tear. Dr. Gibbons further noted that the MRI scan showed evidence of joint effusion and that the biceps tendon proximately appeared to be slightly displaced out of the biceps tendon groove. The employing establishment controverted the claimed recurrence.

In a medical note dated March 23, 2004, Dr. E.A. McLarney, a Board-certified orthopedic surgeon, indicated that appellant was limited to light duty with restrictions of no lifting over 10 pounds and no mail route delivery. On March 30, 2004 appellant accepted the employing establishment's offer of a modified assignment.

By decision dated May 7, 2004, the Office denied appellant's claim for recurrence as appellant had not established that her current medical condition resulted from the accepted occupational disease claim of November 28, 1994.

On May 24, 2004 appellant submitted reports dated October 23, 2003 and March 23, 2004 by Dr. McLarney. In the report dated October 23, 2003, Dr. McLarney noted her impression as:

"Right shoulder, chronic pain since overuse injury at work in 1993. I think that [appellant] has abnormal motion through her shoulder. It is difficult to say exactly what her original injury was, whether she had trapezius injury and then

that lead to abnormal use of her shoulder and impingement, but now she has severe scapulothoracic dyskinesia.”

In her report dated March 23, 2004, Dr. McLarney indicated that appellant had “right shoulder supraspinatus and subscapularis rotator cuff tear, biceps tendon subluxation.”

On May 27, 2004 appellant requested reconsideration of the Office’s decision.

By decision dated June 9, 2004, the Office denied appellant’s request for reconsideration. The Office found that appellant did not raise substantive legal questions nor include pertinent new and relevant evidence and accordingly, appellant’s request was insufficient to warrant a review of the prior decision. In denying reconsideration, the Office specifically listed the evidence appellant submitted in support of reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential element of her claim by the weight of the reliable probative and substantial evidence.² In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition³ causally related to the accepted employment injury. To establish the requisite causal connection, appellant is responsible for submitting an attending physician’s report, which contains a description of the objective findings and supports causal relationship between appellant’s current and accepted condition.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵

ANALYSIS -- ISSUE 1

The Office considered appellant’s claim to be a claim for recurrence of the occupational disease claim filed on December 4, 1994 and accepted for right shoulder tendinitis/chronic impingement syndrome. Appellant did not submit any medical evidence prior to the Office’s

¹ 5 U.S.C. §§ 8101-8193.

² *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment. 20 C.F.R. § 10.5(y).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrence of Medical Condition*, Chapter 2.1500.5.b (May 1993).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305, 311 (1988).

May 7, 2004 decision that indicated that she sustained a recurrence of her medical condition causally related to her December 4, 1994 occupational disease claim. Although the reports of Dr. Gibbons indicated that appellant had a full thickness rotator cuff tear and Dr. McLarney indicated in her March 23, 2004 report, that appellant had light-duty restrictions, neither of these physicians in these reports linked appellant's condition to her federal employment. Accordingly, as appellant has not submitted medical evidence to support that she sustained a recurrence of her occupational disease, the Office properly denied appellant's claim for recurrence in its May 7, 2004 decision.⁶

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁷

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence, which may be necessary to discharge his burden of proof.⁸ The requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁹

ANALYSIS -- ISSUE 2

In the instant case, the Office received additional medical evidence on May 24, 2004, or after the issuance of its May 7, 2004 decision. This evidence included reports by appellant's treating physician, Dr. McLarney, with regard to the condition of appellant's right shoulder. In its decision denying appellant's request for reconsideration, the Office specifically lists evidence that was submitted with appellant's reconsideration request. This evidence was new, pertinent and relevant to the issue of whether appellant had a recurrence of her right shoulder condition. Even if this evidence was insufficient to discharge appellant's burden of proof, these submissions were pertinent, new and relevant to the issue of whether appellant sustained a recurrence of her medical condition. As such, the Office improperly declined to reopen appellant's case on the merits. Accordingly, this case must be remanded to the Office for this purpose.

⁶ *Stephen T. Perkins*, 40 ECAB 1193 (1989).

⁷ 20 C.F.R. § 10.606(b)(2) (i-iii).

⁸ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁹ *See* 20 C.F.R. § 10.606(b)(3).

CONCLUSION

The Board finds that the Office properly determined that appellant had not established a recurrence of her employment-related medical condition at the time of its May 7, 2004 decision. The Board further finds that the Office improperly declined to reopen appellant's case on the merits due to the submission of pertinent new and relevant evidence. The case is remanded for further consideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2004 is hereby affirmed. The decision of the Office dated June 9, 2004 is vacated and this case is remanded for further proceedings consistent with this opinion, to be followed by an appropriate decision.

Issued: May 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member