

lifting, carrying and throwing mail. The reverse of the claim form indicated that appellant was off work from February 22 to March 8, 2000. The Office accepted the claim for right shoulder bursitis; she was off work intermittently and received compensation through November 16, 2001. A duty status report (Form CA-17) dated February 5, 2003 from Dr. Eric Reiner, an internist, indicated that appellant could work with restrictions.

On September 4, 2003 appellant filed a notice of recurrence of disability and claim for compensation (Form CA-2a) alleging a recurrence as of August 25, 2003. She indicated that she had been working light duty since March 8, 2000 and reported “N/A [not applicable]” with respect to the date she stopped work following the recurrence. Appellant stated that her shoulder pain was persistent and that the type of work she performed may have aggravated her condition.

By decision dated December 4, 2003, the Office denied the claim for a recurrence of disability. Appellant requested a hearing before an Office hearing representative, which was held on July 21, 2004. Appellant submitted a report dated December 16, 2003 from Dr. Mark Maffet, an orthopedic surgeon, who stated that she continued to have positive signs of impingement syndrome.

In a decision dated October 18, 2004, the hearing representative affirmed the December 4, 2003 decision. The hearing representative found that the medical evidence did not establish a recurrence as of August 25, 2003 causally related to the employment injury.

By letter dated March 29, 2005, appellant requested reconsideration of her claim. She submitted a report dated December 29, 2004 from Dr. Reiner, who stated that appellant sustained a traumatic injury to her arm and “to the best of my medical opinion the problem has persisted and the current shoulder condition which was related to the initial injury.” He indicated that a magnetic resonance imaging scan revealed a rotator cuff tear as well as bursitis tendinitis. Dr. Reiner also completed a duty status report (Form CA-17) dated November 29, 2004, indicating that appellant could work with restrictions.

In a decision dated June 9, 2005, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

¹ 20 C.F.R. § 10.5(x).

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

ANALYSIS -- ISSUE 1

In the present case, appellant did not allege a change in the light-duty requirements. It is not clear whether appellant is claiming any specific period of disability on or after August 25, 2003, as she wrote “not applicable” with respect to a work stoppage. In this case, Dr. Maffet diagnosed an impingement syndrome on December 16, 2003, which is not an accepted injury. It is appellant’s burden of proof to establish a medical condition or disability as of August 25, 2003, that is causally related to the employment injury.³ Dr. Maffet did not provide a reasoned opinion on causal relationship with the employment injury or discuss appellant’s condition as of August 25, 2003.

The Board finds no probative medical evidence with respect to a recurrence of a medical condition or a recurrence of disability as of August 25, 2003. Appellant did not establish a change in the nature and extent of an employment-related condition as of August 25, 2003, and the Office properly denied her claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁴ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either “(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office].”⁵ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁶

ANALYSIS -- ISSUE 2

Appellant submitted a December 29, 2004 report from Dr. Reiner, stating that appellant’s current shoulder condition was related to the initial injury. This is not considered

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Appellant has the burden of proof to show that a specific condition is causally related to the employment injury. *Calvin E. King*, 51 ECAB 394, 400 (2000). If appellant is claiming that her light-duty job aggravated her condition, this would be a claim for a new injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997).

⁴ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

to be new and relevant evidence because it does not address the issues in this case. Dr. Reiner provided a general statement that appellant's current condition was related to the original injury. His diagnoses included a rotator cuff tear and he did not provide any additional information on causal relationship between this condition and employment. In addition, he did not discuss appellant's employment-related condition as of August 25, 2003 or otherwise provide relevant information regarding the CA-2a form claim in this case. The November 29, 2004 duty status report similarly fails to provide new and relevant evidence.

Moreover, appellant did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. The Board therefore finds that appellant did not meet any of the requirements of section 10.606(b)(2). According to section 10.608(b), the Office properly denied the request for reconsideration without merit review of the claim.

CONCLUSION

The Board finds that appellant did not establish a recurrence of disability as of August 25, 2003. The Board further finds that the Office properly denied the March 29, 2005 request for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 9, 2005 and October 18, 2004 are affirmed.

Issued: October 25, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board