

for left shoulder strain. Appellant underwent left shoulder subacromial decompression surgery on April 26, 1999. She returned to limited duty on June 2, 1999 and to full regular duty on August 17, 1999. Appellant subsequently filed a Form CA-2a notice of recurrence of disability alleging a recurrence of her September 17, 1998 injury on August 21, 2001.

In a decision dated December 13, 2001, the Office denied her recurrence of disability claim, finding that the medical evidence failed to demonstrate a causal relationship between her claimed symptoms and her accepted injury. Appellant requested reconsideration and submitted an October 17, 2002 report from Dr. J. David Delapp, a Board-certified orthopedic surgeon, who diagnosed left shoulder bony impingement syndrome with Type 3 acromion with a large spike anteriorly.

On January 30, 2003 the Office denied modification of the December 13, 2001 decision.

On April 13, 2003 appellant requested reconsideration and submitted argument pertaining to her medical treatment.

On June 16, 2003 the Office issued a nonmerit decision denying further review of appellant's case. It noted that her contentions regarding the medical evidence of record was irrelevant to the issue of the case, which was medical in nature.

On March 9, 2004 appellant submitted a medical report from Dr. Delapp dated March 5, 2004 and asked that it be included in the record. He diagnosed left shoulder bony impingement syndrome. This report was substantially similar to Dr. Delapp's October 17, 2002 report.

On March 10, 2004 the Office issued a nonmerit decision denying further review of appellant's claim.

Appellant requested reconsideration by letter dated March 16, 2004.

By decision dated May 26, 2004, the Office denied modification of its prior decisions. The Office found that insufficient medical evidence supporting a causal relationship between her August 21, 2001 recurrence claim, and the September 17, 1998 injury.

Appellant disagreed with this decision and by letter dated May 21, 2005 requested reconsideration of the Office's May 26, 2004 decision. She referenced Dr. Delapp's medical reports, submitted with her prior reconsideration requests.

By decision dated June 1, 2005, the Office denied reconsideration without reviewing the merits of her claim. The Office found that no new, relevant evidence was submitted in support of the reconsideration request, and that there were no new legal contentions that the Office had not considered in the past. It noted that appellant's reconsideration request did not advance any point of law or fact not previously considered, or address the deficiency of the medical evidence in her claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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 argument not previously considered by the Office; (3) constitute relevant and pertinent new evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on its merits.⁴

ANALYSIS

In support of her May 21, 2005 reconsideration request, appellant presented contentions regarding her medical care by Dr. Delapp. She also presented an extensive personal statement. Her contentions do not address the particular issue involved, in this case the claimed recurrence of total disability commencing August 21, 2001, and therefore does not constitute a basis for reopening a case.⁵ Appellant resubmitted medical reports by Dr. Delapp, which were previously of record and reviewed by the Office. As these reports are duplicative of evidence already in the case record, the Board finds that they are of no evidentiary value and do not constitute a basis for reopening the case for further merit review.⁶

Appellant has neither shown that the Office erroneously applied or interpreted a specific point of law, nor advanced a legal argument not previously considered by the Office, nor submitted relevant and pertinent new evidence not previously considered by the Office. Thus, the Board finds that the Office properly declined to reopen appellant's case on the merits.

CONCLUSION

The Board finds that 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).

¹ 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).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.607(a).

⁴ 20 C.F.R. § 10.608(b); *see also Judy L. Kahn*, 53 ECAB 321 (2002).

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

⁶ *See Richard Yadron*, 57 ECAB ____ (Docket No. 05-1738, issued November 8, 2005); *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2005 is hereby affirmed.

Issued: January 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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