

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lavinia, TN, Employer**

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**Docket No. 06-1725
Issued: October 18, 2006**

Appearances:
Appellant, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from an April 27, 2006 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated April 5, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501(c)(2) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 55-year-old mail carrier, filed a Form CA-2 claim for benefits on August 13, 2003, alleging that he developed a tendinitis condition in his collarbone causally related to factors of his federal employment. The Office accepted the claim for aggravation of right shoulder tendinitis.

In a report dated March 5, 2004, Dr. Peter J. Lund, a Board-certified orthopedic surgeon and appellant's treating physician, stated:

“[Appellant's] pain has resolved to a point where no further treatment was considered necessary. He was considered at the point of maximum medical improvement on February 25, 2004. No further treatment at this time is recommended. On employment duties as described could potentially aggravate this condition but most patients are able to alter or modify these activities in ways that do not cause discomfort. The biggest risk of worsening of his condition would be any type of repetitive shoulder motion that leads to pain due to impingement.”

By decision dated March 30, 2004, the Office terminated appellant's entitlement to compensation, finding that all residuals stemming from his accepted right shoulder condition had ceased.

On January 7, 2005 appellant requested reconsideration.

By decision dated January 20, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

On February 21, 2005 appellant requested reconsideration. Appellant submitted reports dated January 12 and February 9, 2005 from Dr. Lund. On January 12, 2005 Dr. Lund observed no scars, atrophy or tenderness in the acromioclavicular (AC) joint. He found that appellant had impingement syndrome of the right shoulder, with no evidence of fracture, dislocation, subluxation, soft tissue mass or effusion. Dr. Lund advised that appellant did have moderate degenerative changes in the AC joint with inferior osteophyte formation. He reiterated these findings in his subsequent report.

By decision dated April 5, 2005, the Office denied modification of the March 30, 2004 decision.

On March 23, 2006 appellant requested reconsideration. He submitted reports dated November 24, 2003 through July 21, 2005 from Dr. Lund, who reiterated the diagnoses of right shoulder impingement, right shoulder tendinitis and degenerative changes in the AC joint, stated findings on examination, and recommended continued treatment and monitoring of appellant's right shoulder condition. In a May 11, 2005 report, Dr. Lund stated:

“Patient followed for greater than one year with chronic right shoulder rotator cuff tend[i]nitis. He report that [h]is symptoms are less severe at this time as he is not working but he still has pain and knows that if he goes back to any type of manual job his symptoms will once again worsen. [Patient] would like to proceed with surgery understanding that this is optional at this time. His x-rays reveal AC joint degenerative changes. [Patient's] previous MRI [magnetic resonance imaging] [scan] showed findings consistent with impingement and partial rotator cuff tearing. I have recommended arthroscopic decompression and AC joint excision.

He understands that if his rotator cuff is found to be torn, that surgical repair would be performed at that time.”

On his June 1, 2005 report Dr. Lund indicated that appellant underwent surgery for AC joint excision and mini open rotator cuff repair on May 27, 2005.

By decision dated April 27, 2006, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.³ Appellant has not submitted any new medical evidence which addresses the relevant issue of whether he has residuals of his accepted condition of aggravation of right shoulder tendinitis. Dr. Lund’s reports indicated generally that appellant continued to experience symptoms relating to his right shoulder, due to degenerative changes, and that he underwent right shoulder surgery in May 2005. However, his reports did not contain any medical opinion indicating that appellant’s shoulder symptoms or the May 2005 surgery were causally related to the accepted aggravation of tendinitis, which Dr. Lund had reported as resolved. Appellant’s reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant’s claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant’s case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 18, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board