

she received appropriate compensation for intermittent disability. She was treated conservatively and released to modified duty. Appellant was subsequently diagnosed with right carpal tunnel syndrome and she underwent a surgical release on December 30, 1992, authorized by the Office. She was released to light-duty work but became disabled due to continuing right wrist symptoms. A repeat carpal tunnel release was performed on October 8, 1993. She was returned to modified-duty work with specified restrictions.¹ On January 4, 1995 she received a schedule award for 10 percent impairment of the right upper extremity.²

On February 17, 1999 appellant filed an occupational disease claim for pain to her left upper extremity. She stopped work on February 4, 1999 and returned to modified duty on February 16, 1999. She was treated by Dr. Warren S. Nishimoto, an osteopath. He diagnosed left shoulder tendinitis with cervical and thoracic strains and paravertebral muscle spasms. The Office accepted left wrist and left shoulder tendinitis.³ Appellant stopped work on May 24, 1999 and underwent surgery on April 21, 2000 for a left shoulder glenohumeral joint debridement, subacromial decompression and distal clavicle resection. Appellant returned to modified-duty work for four hours a day as of June 19, 2000. On October 22, 2002 she was returned to full-time regular-duty work without restriction.

On September 1, 2004 appellant filed a notice of recurrence of disability for medical treatment commencing August 25, 2004 which she attributed to her 1999 injury. She described pain in the left shoulder, both elbows and wrists. She did not stop work.

On September 9, 2004 the Office advised appellant as to the evidence needed to establish her claim. It requested that she submit a physician's opinion addressing how her claimed condition was causally related to her employment injury. No response appears of record.

In a November 15, 2004 decision, the Office denied appellant's claim. It found that she did not respond to the request for additional factual and medical evidence.

On December 5, 2004 appellant requested reconsideration and submitted treatment notes from Dr. Nishimoto. On November 4, 2004 Dr. Nishimoto indicated that appellant's right shoulder and arms were stiff. He diagnosed a cervical strain and prescribed medication, recommending part-time work for six hours a day. On December 2, 2004 Dr. Nishimoto noted increasing stiffness with cold weather. He diagnosed cervical strain and muscle spasms, recommending that appellant continue to work six hours a day.

¹ Due to continuing complaints, appellant underwent repeat diagnostic studies on April 25, 1994 which revealed no evidence of carpal tunnel syndrome, ulnar compression neuropathy but evidence of a C7 or C8 radiculopathy. On August 4, 1994 her attending physician, Dr. Dolf R. Ichtetz, a Board-certified orthopedic surgeon, noted that appellant was stationary with normal grip strength, no muscle atrophy and normal nerve conduction studies.

² On September 9, 1998 appellant filed a recurrence of disability claim commencing September 1993 that she attributed to her 1991 injury. She did not stop work. The Office advised appellant that her case remained open for medical treatment as there were permanent residuals of the accepted injury.

³ The Office consolidated appellant's claim into a master file on March 26, 1999.

In a January 3, 2005 decision, the Office denied modification of the November 15, 2004 decision. It noted that Dr. Nishimoto's treatment records did not address the issue of a recurrence of disability or the causal relationship of her present condition to her original injury.

On January 9, 2005 appellant requested reconsideration contending that she experienced pain to her left shoulder and elbow and right wrist, which she attributed to repetitive keying and writing.⁴ She submitted a September 10, 2004 treatment note from Dr. Bert G. Tardieu, an attending orthopedic surgeon, who recorded her complaint of left shoulder and arm weakness and recommended work restrictions, advising that she needed to be at less intensive activities and avoid use of a keyboard or mouse. Dr. Tardieu listed that her additional treatment was unknown at that time.

Appellant also submitted monthly treatment notes from Dr. Nishimoto. On December 15, 2005 Dr. Nishimoto recorded her left shoulder complaints, indicating a decreasing range of motion. He indicated that appellant would be referred back to Dr. Tardieu and continued her six hour a day work restriction through February 18, 2005. Following examination on March 14, 2005, Dr. Nishimoto diagnosed bicipital tendinitis and thoracic strain. He advised that she was totally disabled from March 4 to 21, 2005. On April 11, 2005 the physician noted continuing left shoulder complaints and advised that appellant could work six hours a day.

On April 19, 2005 appellant submitted a Form CA-7 claim for compensation for 146.75 hours of leave without pay used from March 1 to April 22, 2005. Dr. Nishimoto's May 21, 2005 treatment note recorded left hand numbness with pain in both shoulders. He noted her prior rotator cuff repair surgery and diagnosed possible adhesive capsulitis. Following examination on June 15, 2005, he continued appellant's medications and recommended an MRI scan.

In a November 28, 2005 decision, the Office denied reconsideration on the basis that the evidence submitted was cumulative or duplicative of that already reviewed and considered. It noted that the medical records generally listed dates of treatment and appellant's capacity for work without addressing the issue of causal relationship.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition, which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.⁵ An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish that the disability for which she seeks compensation is causally related to the accepted injury.⁶ Whether a particular injury causes disability for work is primarily

⁴ The record reflects that on January 18, 2005, Dr. Nishimoto filed an appeal of the January 3, 2005 decision to the Board. It was docketed as No. 05-627. The appeal was dismissed by order dated March 10, 2005, as Dr. Nishimoto was neither a federal employee seeking review of an adverse decision nor appellant's designated representative.

⁵ See 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

a medical question.⁷ A physician must provide a reasoned opinion on the issue of causal relationship that is based upon a complete and accurate factual and medical history.⁸

ANALYSIS -- ISSUE 1

Appellant sustained injuries in 1991 and 1999 accepted by the Office for right carpal tunnel syndrome and left wrist and left shoulder tendinitis. She received appropriate compensation for intermittent disability for work. The record reflects that following surgery on April 21, 2000, appellant returned to regular full-time duty without restrictions on October 22, 2002. On September 1, 2004 she filed a notice of recurrence of disability, noting symptoms to her left shoulder, both elbows and wrists. However, prior to the November 15, 2004 decision, appellant did not submit any medical evidence in support of her claim. In this regard, she failed to establish a *prima facie* claim for compensation.

On reconsideration, she submitted treatment notes of Dr. Nishimoto. On November 4, 2004 he noted her right shoulder complaints, diagnosed a cervical strain and prescribed medication. He also recommended that she reduce work to six hours a day. Similarly, on December 2, 2004, he noted increasing stiffness with cold weather and advised that she continue work for six hours a day. The Office denied modification on January 2, 2005, noting that the treatment records did not address the relevant issue of a causal relationship of her present condition to her original injury. Dr. Nishimoto's treatment records do not provide any discussion explaining how appellant's symptoms or disability were caused or contributed to by the accepted employment injuries. Appellant was requested by the Office to submit a physician's narrative report, which reviewed her medical history, listed findings on examination and provided an opinion on causal relationship: a reasoned explanation by a physician, based upon a complete and accurate factual and medical history, addressing how her current condition was related to the accepted employment injury.⁹ Dr. Nishimoto's treatment records do not contain any statement on the underlying issue of causal relationship. Appellant's own belief that her condition was caused or aggravated by her employment is not sufficient to establish causal relationship.¹⁰ This medical evidence is of diminished probative value and not sufficient to establish appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Federal Employees' Compensation Act,¹¹ the Office has the discretion to reopen a case for review of the merits. The Office must exercise this discretion in

⁷ See *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁸ See *Carol S. Madsen*, 54 ECAB 331 (2003).

⁹ See *Joan R. Donovan*, 54 ECAB 615 (2003).

¹⁰ See *Robert A. Boyle*, 54 ECAB 381 (2003). To the extent that appellant attributes her condition commencing in 2004 to her keyboard and work activities, this would not support a claim for a recurrence of disability as it implicates new employment exposures.

¹¹ 5 U.S.C. § 8128(a).

accordance with the guidelines set forth in section 10.606(b)(2) of its implementing federal regulations.¹² The regulations provide that a claimant may obtain review of the merits of her claim by submitting a written application for reconsideration, including supporting documents, setting forth arguments and containing evidence that:

“(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 new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for reconsideration which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

On reconsideration, appellant submitted additional treatment records from Dr. Nishimoto and Dr. Tardieu, her attending physicians. She did not contend 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 issue is whether the treatment records submitted constitute relevant and pertinent new evidence not previously considered by the Office.

The records from Dr. Nishimoto reflect treatment for shoulder complaints, upper extremity and thoracic symptoms. He also noted a diagnosis of possible adhesive capsulitis. He continued to recommend that appellant work six hours a day and indicated that she was totally disabled due to bicipital tendinitis and a thoracic strain for the period March 4 to 21, 2005. These treatment records, while new, are not relevant to the underlying claim as the physician did not provide any opinion on causal relationship. The monthly reports are largely duplicative of those considered by the Office as they listed monthly dates of treatment and noted appellant's capacity for work. There is no medical opinion offered by Dr. Nishimoto explaining how the symptoms he treated were caused or contributed to by the accepted employment injuries. It is well established that evidence that does not address the underlying issue involved in a claim does not constitute a basis for reopening a claim for further merit review.¹⁴ Similarly, the reports of Dr. Tardieu recorded appellant's complaint of left shoulder and arm weakness and advised that she avoid use of a keyboard or mouse. He did not provide any opinion addressing how her current condition was due to the accepted employment injuries. The reports of Dr. Tardieu are not relevant to the underlying issue on appeal. Appellant failed to submit evidence relevant and

¹² 20 C.F.R. § 10.606(b)(2).

¹³ 20 C.F.R. § 10.608(b).

¹⁴ See *Judy L. Kahn*, 53 ECAB 321 (2002).

pertinent to the underlying issue of causal relationship. For this reason, the Office properly denied her request for reconsideration without further merit review.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing September 2004 causally related to either her 1991 or 1999 injuries. The Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 28 and January 3, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 8, 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