

September 12, 2006 letter, Dr. Carlos Cyrus, Board-certified in physical medicine and rehabilitation, diagnosed right rotator cuff tendinitis and prescribed light duty. In a note dated September 18, 2006, he indicated that appellant was beginning shoulder rehabilitation and would return to full duty on September 21, 2006. In a September 22, 2006 letter, appellant described how his condition began on March 7, 2006 but worsened over time due to continual overhead lifting and repetitive motion.

In an October 25, 2006 letter, the Office requested additional information from appellant and asked him to clarify whether his claim was for a traumatic injury or an occupational disease. In a November 8, 2006 letter, appellant agreed with the Office's characterization of his injury as an occupational disease. He described his doctor visits and informed the Office that he was waiting on reports from various doctors. The Office received additional work restriction notes from Dr. Cyrus dated April 13 and July 13, 2006.

By a November 28, 2006 decision, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that his medical condition resulted from the accepted events.

In a December 12, 2006 letter, appellant requested reconsideration. By a December 21, 2006 decision, the Office denied reconsideration on the grounds that no new relevant evidence was submitted or any new legal contentions presented.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant.²

¹ *Anthony P. Silva*, 55 ECAB 179 (2003).

² *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

ANALYSIS -- ISSUE 1

Appellant alleged that his right shoulder condition was causally related to factors of his federal employment which began with his work-related fall on March 7, 2006 and worsened over time due to continual overhead lifting and repetitive motion required by his regular work duties. The Board finds that appellant has submitted insufficient medical evidence to establish that his right shoulder condition was caused or aggravated by his federal employment.

The medical evidence of record consists of reports dated April 13 to September 18, 2006, from Dr. Cyrus. In a September 12, 2006 letter, Dr. Cyrus diagnosed right rotator cuff tendinitis and listed appellant's light-duty restrictions. The treatment notes listed appellant's weight and movement restrictions. The medical evidence establishes that a shoulder condition exists but Dr. Cyrus failed to provide a rationalized opinion on causal relationship. The notes of record do not address the March 7, 2006 fall or those work duties involving overhead lifting or repetitive motions. Dr. Cyrus made no mention of appellant's work history nor identified any work factors which caused or contributed to the diagnosed right shoulder condition. He did not provide a full medical history or other information to establish a causal relation between appellant's condition and factors of his employment.

Appellant failed to submit medical evidence to establish causal relationship and, therefore, has failed to discharge his burden of proof to establish that he sustained a condition due to factors of his federal employment.

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.³

ANALYSIS -- ISSUE 2

Appellant's application for review of the Office's November 28, 2006 decision did not satisfy the standards of 20 C.F.R. § 10.606(b). His December 12, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Appellant did not submit any additional documentation after the Office issued its November 28, 2006 merit decision, therefore, no relevant and pertinent new evidence was submitted. He is not entitled to review of the merits of his claim based on any of the three requirements under section 10.606(b)(2).

³ 20 C.F.R. § 10.606(b)(2)(iii) (2004).

As appellant is not entitled to a review of the merits of his claim, the Board finds that the Office properly refused to reopen his case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant failed to establish that he sustained an occupational disease in the performance of duty. Additionally, the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 21 and November 28, 2006 decisions of the Office of Workers' Compensation Programs are affirmed

Issued: June 19, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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