



## **FACTUAL HISTORY**

This case has been before the Board on two prior occasions. In a July 26, 2005 decision, the Board found that the case was not in posture for decision as a conflict in medical evidence arose between appellant's attending physiatrist, Dr. Subbanna Jayaprakash, and an Office medical adviser, Dr. James Bicos, regarding the impairment to appellant's right upper extremity. The Board remanded the case to the Office to refer appellant to an appropriate Board-certified physician for an impartial medical evaluation.<sup>2</sup> In a July 19, 2007 decision, the Board accorded special weight to the impartial evaluation of Dr. Stephen E. Barron, Board-certified in orthopedic surgery, who found that appellant was not entitled to an increased schedule award for his right upper extremity. The Board also found that the Office properly refused to reopen appellant's case for further reconsideration of the merits.<sup>3</sup> The law and the facts of the previous Board decisions are incorporated herein by reference.

On July 27, 2007 appellant requested reconsideration. In a September 14, 2006 treatment note, Dr. Joel P. Carroll, Board-certified in emergency medicine, noted appellant's past medical history, his complaint of persistent shoulder pain and examination findings including limited range of motion of the right shoulder. He diagnosed a mild disability. Appellant also submitted copies of magnetic resonance imaging (MRI) scan studies of the right shoulder and cervical spine that were previously of record.

By decision dated September 27, 2007, the Office denied appellant's reconsideration request.

## **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>4</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>5</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>6</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.<sup>7</sup> Office regulations at 20 C.F.R. § 10.608(b) provides that when a request for reconsideration is

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<sup>2</sup> Docket No. 05-1984.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.608(a).

<sup>7</sup> 20 C.F.R. § 10.608(b)(1) and (2).

timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

### ANALYSIS

The only decision before the Board in this appeal is the September 27, 2007 decision of the Office denying appellant's application for review. In his July 27, 2007 reconsideration request, appellant merely described the facts of his case and advised that his right shoulder pain and numbness continued to worsen. He did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant was not entitled to a review of the merits of his claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(2).<sup>9</sup>

With respect to the third above-noted requirement under 20 C.F.R. § 10.606(b)(2), the MRI scan studies were previously reviewed by both the Office and the Board. It is well established that material that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim.<sup>10</sup> These reports are therefore insufficient to warrant merit review. Appellant also submitted a September 14, 2006 treatment note from Dr. Carroll. However, Dr. Carroll merely noted appellant's medical history, his complaints and examination results and opined that he was mildly disabled. His report did not provide any opinion on appellant's impairment, the underlying issue in this case. This report is therefore irrelevant.<sup>11</sup> As appellant did not submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his reconsideration request by its decision dated September 27, 2007.

### CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> 20 C.F.R. § 10.608(b).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> *Brent A. Barnes*, 56 ECAB 336 (2005).

<sup>11</sup> *See Betty A. Butler*, 56 ECAB 545 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 27, 2007 be affirmed.

Issued: April 10, 2008  
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