

while delivering her route. Appellant previously had left shoulder surgery in 1998. She did not stop work at the time of her claim.

In a March 29, 2007 accident report, appellant's supervisor acknowledged that she handled heavy trays of mail and held mail on her left forearm while casing mail.

In a March 19, 2007 report, Dr. Janet Neuburg, an attending physician Board-certified in family practice and occupational medicine, noted appellant's complaint of left shoulder pain for three months. She noted that appellant worked for the employing establishment, assigned to a park and loop route. Appellant used her "left arm in a sustained position to hold letters and flats while she cases with the right hand." She also reached into her vehicle to get packages of mail. Dr. Neuburg stated that appellant underwent surgery in 1998 for a rotator cuff tear and recovered well. On examination, she found a positive impingement test and minimal crepitation on palpation. Dr. Neuburg diagnosed impingement tendinitis of the left shoulder. She prescribed physical therapy and released appellant to full duty.

In an April 12, 2007 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. The Office emphasized the importance of a rationalized report from her physician explaining how and why work factors would cause the claimed left shoulder condition. Appellant was afforded 30 days in which to submit such evidence.

Appellant submitted progress reports from Dr. Neuburg, through May 22, 2007, noting improvement in the left shoulder.¹

By decision dated May 31, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office accepted her account of work factors as factual. The Office found, however, that appellant submitted insufficient rationalized medical evidence to establish that those factors caused or contributed to the claimed left shoulder condition.

In a July 9, 2007 letter, appellant requested reconsideration. She attributed her left shoulder condition to cradling 15-pound bundles of mail with her left arm, casing mail for one to three hours a day, putting rubber bands around bundles of mail and delivering seasonal catalogues and magazines. Appellant submitted additional evidence.

In a May 22, 2007 chart note, Dr. Neuburg stated that appellant's condition had improved with physical therapy and home exercise. She administered a left shoulder injection.

In a June 15, 2007 chart note, Dr. Michael L. Adams, an attending physician specializing in preventive medicine, observed a nearly normal left shoulder. He diagnosed impingement syndrome of the left shoulder and released appellant to full duty.

¹ Appellant also provided work restriction slips from October 1997 to February 1999 related to a prior injury. These documents are not relevant to the present appeal.

By decision dated July 18, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was either cumulative or irrelevant to her claim. The Office found that her letter and the May 22 and June 15, 2007 chart notes did not address the relevant issue of causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment 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 employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that she developed a left shoulder condition due to casing and delivering mail at work. The Office accepted that she performed such duties, but denied her claim on the grounds that the medical evidence was not sufficient to establish that these work factors caused or aggravated the claimed condition.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

In support of her claim, appellant submitted reports from Dr. Neuburg, an attending physician Board-certified in family practice and occupational medicine. On March 19, 2007 Dr. Neuburg noted that appellant worked a park and loop route, used her “left arm in a sustained position to hold letters and flats while she cases with the right hand” and reached into her “vehicle to get packages of mail.” She diagnosed impingement tendinitis of the left shoulder. However, Dr. Neuburg did not explain how or why delivering mail, holding letters and flats with the left arm, reaching into a vehicle or any of the identified work factors would cause or aggravate the diagnosed condition. Her later progress notes did not address causal relationship. Therefore, Dr. Neuburg’s opinion is insufficiently rationalized to meet appellant’s burden of proof in establishing causal relationship.⁶ The Board notes that appellant was advised by an April 12, 2007 letter of the importance of submitting a rationalized report from her physician explaining how and why work factors would cause the claimed condition. However, appellant did not submit such evidence.

Therefore, appellant has not established that she sustained a left shoulder condition in the performance of duty, as she submitted insufficient rationalized medical evidence to establish the asserted causal relationship.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge her burden of proof.¹⁰ She need only submit relevant, pertinent evidence not previously considered by the Office.¹¹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2) (2003).

⁹ *Id.* at § 10.608(b) (2003).

¹⁰ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹¹ See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹²

ANALYSIS -- ISSUE 2

The Office denied appellant's left shoulder condition claim by decision dated May 31, 2007, finding that she submitted insufficient rationalized medical evidence to establish causal relationship. Appellant then requested reconsideration by July 9, 2007 letter. She also submitted a May 22, 2007 chart note from Dr. Neuburg and June 15, 2007 chart notes from Dr. Adams, an attending physician specializing in preventative medicine.

The underlying issue in the case was whether appellant established a causal relationship between the identified work factors and the claimed left shoulder condition. To be relevant, the evidence submitted in support of the July 9, 2007 request for reconsideration must address that issue. The chart notes from Dr. Neuburg and Dr. Adams describe improvement in appellant's condition but do not address causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.¹³ Therefore, the chart notes are insufficient to warrant reopening the claim for a merit review. Appellant's July 9, 2007 letter is repetitive of her prior descriptions of her work activities. Evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹⁴

Thus, appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant has not established that she sustained a left shoulder condition in the performance of duty. The Board further finds that the Office properly denied her request for a merit review.

¹² *Annette Louise*, 54 ECAB 783 (2003).

¹³ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁴ *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18 and May 31, 2007 are affirmed.

Issued: March 20, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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