



On March 18, 2009 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence.

Appellant submitted treatment notes from physician's assistants dated between September 30, 2008 and March 6, 2009 indicating appellant's complaint of right shoulder pain. She also submitted witness statements dated March 24 and 31, 2009.

In a September 30, 2008 statement, appellant indicated reporting the work incident to her supervisor when it occurred. She stated that she was on the work floor dispatching flat tubs and she heard a pop in her right shoulder when she lifted a tub above her head. Appellant admitted delaying medical attention as she thought the condition would get better on its own. She noted no prior shoulder injuries or disability.

In an April 21, 2009 decision, the Office denied appellant's claim finding the evidence insufficient to establish that she sustained an injury as defined by the Act.

Appellant requested reconsideration on April 30, 2009 and submitted several reports from Dr. Daniel Stoop, Board-certified in family medicine. In a September 30, 2008 report, Dr. Stoop noted appellant's complaint of right shoulder pain that was slowly getting worse. His examination revealed subacromium bursa tenderness of the right upper extremity, full range of motion of the shoulder with pain on internal and external rotation. Dr. Stoop diagnosed bursitis tendinitis of the right shoulder. On October 8, 2008 he noted appellant's complaint of continued anterolateral shoulder pain. Upon examination, Dr. Stoop found subacromium bursa tendinitis, reduced shoulder abduction, extension and flexion as well as reduced internal and external rotation. In a report dated January 7, 2009, he indicated that appellant had right shoulder pain and that she was hurt at work while lifting heavy mail above her shoulders. Dr. Stoop noted examination findings and diagnosed bursitis, tendinitis of the right shoulder. Right shoulder x-ray showed no gross abnormalities. On March 6, 2009 Dr. Stoop reiterated his examination findings.

In a June 11, 2009 decision, the Office denied appellant's claim finding that, although she established that the incident occurred as alleged, the medical evidence was insufficient to establish that the claimed condition was causally related to the July 7, 2008 work incident. It found that appellant's physician did not address how the July 7, 2008 incident caused or contributed to the diagnosed condition.

Appellant requested reconsideration on July 7, 2009. In an undated statement, she provided a timeline of her injury and the treatment sought.

Appellant submitted a June 19, 2009 report from Dr. Stoop who noted appellant's right arm pain and that the date of injury was July 7, 2008. Dr. Stoop reiterated his prior examination findings consisting of reduced shoulder abduction, extension, flexion, internal rotation and external rotation. He diagnosed bursitis tendinitis of the right shoulder. In an addendum at the bottom of the report, Dr. Stoop noted reviewing appellant's history and advised that appellant reported that her right shoulder injury occurred on July 7, 2008 and that she reported right shoulder pain since that time. He opined that the biomechanics of appellant's work activity at the time of injury provided a reasonable explanation for her injury and pain since that time.

Dr. Stoop stated that appellant's restrictions on working above her shoulder were due to this injury.

In a July 28, 2009 decision, the Office denied appellant's reconsideration request without a merit review finding that the evidence submitted was cumulative to evidence previously of record. It also noted that Dr. Stoop's report did not describe the specific July 7, 2008 incident or provide an opinion on the relationship between appellant's right shoulder condition and the work incident.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>1</sup> Section 10.608(b) of Office regulations provide that when an application for reconsideration 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.<sup>2</sup>

### **ANALYSIS**

The Office denied appellant's claim finding that the medical evidence was insufficient to establish that the July 7, 2008 work incident caused or aggravated the claimed right shoulder condition. Its last merit decision that denied her claim was dated June 11, 2009. In that decision, the Office found that appellant's physician did not address how the July 7, 2008 incident caused or contributed to the diagnosed condition. Appellant requested reconsideration on July 7, 2009 and submitted a June 19, 2009 report from Dr. Stoop.

The underlying issue is medical in nature, regarding whether the July 7, 2008 is causally related to appellant's right shoulder condition. The evidence submitted in support of her reconsideration request must address this issue in order to be relevant. In his June 19, 2009 report, Dr. Stoop noted the date of injury and opined that the biomechanics of appellant's work activity at the time of injury provided a reasonable explanation for her injury and pain since that time. The Office found that the report, while new, was cumulative as it was similar to evidence previously submitted. Dr. Stoop's previous January 7, 2009 report noted a history of appellant being hurt at work while lifting heavy mail above her shoulders. However, this prior report and other reports of Dr. Stoop, previously of record, did not contain an opinion discussing and supporting causal relationship between appellant's July 7, 2008 work incident and her claimed right shoulder condition. Thus, the June 19, 2009 report is relevant new medical evidence as it addresses causal relationship in a manner that Dr. Stoop's previous reports did not. Moreover, the requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof. The

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<sup>1</sup> *D.K.*, 59 ECAB \_\_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>2</sup> *K.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2265, issued April 28, 2008).

requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office. If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.<sup>3</sup> Dr. Stoop's June 19, 2009 report is new medical evidence relevant to the issue of causal relationship and not previously reviewed by the Office.

The Board will set aside the Office's decision denying reconsideration and remand the case for further review of the merits of appellant's claim.

### **CONCLUSION**

The Board finds that the Office improperly denied appellant's request for reconsideration without a merit review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2010 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further action consistent with this decision.

Issued: October 14, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>3</sup> *Donald T. Pippin*, 54 ECAB 631 (2003).