

FACTUAL HISTORY

On August 14, 2008 appellant, then a 46-year-old letter carrier, filed a claim for occupational disease alleging back and right shoulder pain resulting from carrying a heavy mailbag and repetitive motion on his right side during his federal employment.² He first became aware of his claimed condition on January 4, 2008 and realized it resulted from his federal employment on March 13, 2008. Appellant reported that his physical therapist, whom he had seen for back and shoulder pain since March 2008, advised that his alleged condition resulted from carrying a mailbag and repetitive use of his right side. He stopped work on July 15, 2008 and returned on August 4, 2008.

Appellant submitted a work excuse slip dated August 1, 2008, Dr. Paramjit Sikand, an internist and general family practitioner, noted that appellant was seen in his office and could return to work on August 4, 2008. Dr. Sikand recommended physical therapy. Appellant also submitted two duty status reports dated July 11 and 25, 2008, which listed left knee, right shoulder and right back pain. The employing establishment controverted his claim based on insufficient medical evidence establishing how factors of his federal employment caused his claimed condition.

On September 3, 2008 the Office advised appellant that there was insufficient evidence to support his claim. It stated that his description of "pain" did not constitute a proper medical diagnosis and that the medical evidence failed to address how factors of his federal employment caused his alleged condition. The Office requested that appellant provide a description of the employment-related activities he believed contributed to his medical condition, including how often and for how long he performed these activities, and an explanation regarding the development of his alleged condition, including symptoms and treatments received. In addition, it requested a comprehensive medical report from his physician providing a description of his symptoms, results of examinations and tests, a firm diagnosis and a medical opinion regarding the causal relationship between his alleged medical condition and factors of his federal employment.

On September 9, 2008 appellant submitted a (Form CA-7) for 15.84 hours of leave without pay from August 4 to 26, 2008 due to physical therapy appointments. In a letter dated September 22, 2008, the Office informed him that it was unable to authorize payment because it had not yet determined whether his claimed medical condition was work related.

In a letter dated September 23, 2008, appellant described his employment-related activities as a letter carrier, which involved standing, reaching and throwing with his right arm, as well as continuous twisting from left to right. His driving route required him to twist and reach into curbside mailboxes with his right side continuously from 2 to 2½ hours and his walking route required him to carry his mailbag, which could weigh up to 50 pounds, on his shoulder. Appellant listed his symptoms as shooting pain in his neck, back and shoulder,

² Appellant initially filed (Form CA-2A), claiming a consequential injury to a left knee operation, but refilled a Form CA-2 for occupational disease when he was later told by his physical therapist that his back and shoulder pain was a new injury.

tightness, swelling and throbbing. He further mentioned a previous work-related left knee injury that occurred on July 3, 2007.

Appellant also submitted discharge summaries by Dr. Sikand and his physical therapist dated May 22 and August 26, 2008 regarding his back, right shoulder and left knee pain. Dr. Sikand stated that appellant's right thoracolumbar hypertonicity most likely resulted from carrying his mailbag on his left side and continuously using these muscles. He noted that appellant sustained hypoertonicity in his right thoracolumbar. Dr. Sikand further opined that his shoulder and back pain were consistent with repetitive strain of the right shoulder.

In a November 5, 2008 decision, the Office denied appellant's claim for compensation on the grounds that the factual evidence failed to establish that the employment events occurred as alleged and the medical evidence did not provide a firm diagnosis related to the claimed employment factors. It found that the medical evidence failed to provide a firm, medical diagnosis, other than back and left knee pain.

On November 1, 2009 appellant submitted a request for reconsideration. He stated that his injury was caused by repetitive motion in his job as a full-time letter carrier and that his physician and physical therapist agreed that his work activities resulted in increased swelling and aggravation of his shoulder. Appellant added that he had a new seven-hour walking route, which had worsened his back and shoulder strain. In addition, he noted that he was enclosing a copy of the discharge summary from his doctor and physical therapist. No further evidence was received by the Office in support of his request for reconsideration.

On November 19, 2009 the Office denied appellant's request for reconsideration, without conducting a merit review. It found that he failed to raise any substantive legal questions or provide new and relevant evidence not previously considered.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether to review an award for or against compensation.³ The Office's regulations provide that the Office may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.⁴

To require the Office to reopen a case for merit review pursuant to the Act, the claimant must provide evidence or an argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

³ 5 U.S.C. § 8128(a); *see also F.R.*, 61 ECAB __ (Docket No. 09-575, issued January 4, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.605; *see also R.B.*, 61 ECAB __ (Docket No. 09-1241, issued February 23, 2010); *A.L.*, 60 ECAB __ (Docket No. 08-1730, issued March 16, 2009).

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

A request for reconsideration must also be sent within one year of the date of the Office decision for which review is sought.⁶ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If the Office chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one of the requirements for reconsideration, the Office will deny the request for reconsideration without reopening the case for review on the merits.⁸

The Board has held that the submission of evidence which repeats or duplicates evidence previously submitted in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS

The Board finds that the Office properly denied appellant's November 1, 2009 request for reconsideration because he did not meet any of the requirements for reconsideration under 20 C.F.R. § 10.606(b). Appellant did not allege that the Office erroneously applied or interpreted a specific point of law. He also failed to advance a relevant legal argument not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office.

On reconsideration, appellant submitted a letter reiterating his assertion that his injury was caused by repetitive motion from his letter carrier job and stated that he had a new walking route which took seven hours. While the information regarding the seven-hour walking route is new, it is not relevant to the issue in the August 14, 2008 claim that was adjudicated in the November 5, 2008 decision. Thus, appellant did not advance a new legal argument sufficient to constitute a basis for reconsideration.

⁵ *Id.* at § 10.606(b); *see also L.G.*, 61 ECAB __ (Docket No. 09-1517, issued March 3, 2010); *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also R.B.*, 61 ECAB __ (Docket No. 09-1241, issued January 4, 2010); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, 61 ECAB __ (Docket No. 09-1655, issued March 18, 2010); *Y.S.*, 60 ECAB __ (Docket No. 08-440).

⁹ *L.T.*, 61 ECAB __ (Docket No. 09-1798, issued August 5, 2010); *S.J.*, 60 ECAB __ (Docket No. 08-2048, issued July 9, 2009); *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Id.*; *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

In addition, the submission on reconsideration does not address the particular issue involved in his claim, and thus, does not constitute a basis for reconsideration.¹¹ The underlying issue in his claim was that he failed to submit medical evidence establishing a medical diagnosis and causal relationship. As the issue was medical in nature, it could only be resolved through the submission of probative medical evidence.¹² Although appellant stated that he would submit new evidence in support of his request for reconsideration, no further evidence was received. He did not offer any new, pertinent medical evidence pursuant to his request for reconsideration. Since he did not meet any of the requirements warranting reconsideration under 20 C.F.R. § 10.606, the Office properly denied his request for reconsideration without further review on the merits.¹³

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration of his claim pursuant to 5 U.S.C. § 8128(a).¹⁴

¹¹ *D.K.*, 59 ECAB 141 (2007); *R.M.*, 59 ECAB 690 (2008).

¹² *Y.S.*, 60 ECAB __ (Docket No. 08-440, issued March 16, 2009); *L.H.*, 59 ECAB 253 (2007).

¹³ 20 C.F.R. § 10.608; *J.M.*, 60 ECAB __ (Docket No. 09-218, issued July 24, 2010); *A.L.*, 60 ECAB __ (Docket No. 08-1730, issued March 16, 2009).

¹⁴ The Board notes that appellant submitted additional evidence following the November 11, 2009 nonmerit decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2009 is affirmed.

Issued: January 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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