

FACTUAL HISTORY

On November 24, 2009 appellant, then a 57-year-old wood worker, filed a claim for traumatic injury to his left shoulder that occurred on October 26, 2009. He was lifting and stacking chock blocks when he experienced pain in his left shoulder as he lifted wood off a pallet, cut the blocks and put the blocks on another pallet. Appellant stopped work on October 27, 2009 and returned on November 30, 2009.

On December 15, 2009 the Office advised appellant that the evidence was insufficient to support his claim because it did not provide a diagnosis of any condition resulting from the October 26, 2009 incident or a physician's opinion regarding whether the alleged incident caused any diagnosed condition. It requested that appellant provide additional information.

Appellant submitted several Northeast Orthopedic Clinic medical notes, which were unsigned, but which listed the initials "CGK." On October 29, 2009 he was seen for evaluation of his left shoulder, which he alleged was injured at work approximately six months prior when pulling chains off the back of a tank. Appellant complained of pain in his shoulder. His overhead movement was weak with mildly limited range of motion. Appellant's left shoulder internal rotation was limited and his Hawkins sign and impingement test were positive. X-ray evaluation revealed moderate acromioclavicular (AC) arthrosis but no acute changes were noted. The diagnosis was left shoulder impingement with probable significant partial and/or full thickness rotator cuff tear and mildly painful AC joint arthrosis. A November 13, 2009 note stated that appellant's magnetic resonance imaging (MRI) scan did not reveal any significant rotator cuff disease, but did show bony impingement. He was to continue light-duty restrictions with no lifting overhead and no pushing or pulling of the left shoulder.

A November 9, 2009 MRI scan examination was interpreted by Dr. Mark Sateriale, a Board-certified diagnostic radiologist. He stated that appellant's shoulder pain was not due to impingement or a rotator cuff tear. The MRI scan also failed to reveal a tear, cuff degeneration or tendinitis. Dr. Sateriale observed acromioclavicular joint osteoarthritis which impressed the myotendinous joint. He also found evidence of bony impingement, a slight deformity of the posterior labral segment, and minimal fluid in the biceps sheath, but no evidence of rotator cuff tear.

In a decision dated January 21, 2010, the Office denied appellant's claim finding insufficient medical evidence to establish that his left shoulder condition was a result of the October 26, 2009 employment incident.

On February 11, 2010 appellant submitted a request for reconsideration. He resubmitted the medical evidence of record, underlying the November 9, 2009 report of Dr. Sateriale, with an addendum which noted that a multiplanar, multisequential MRI scan of the left shoulder was performed and that appellant had a history of shoulder pain related to an injury received while at work.

In a February 5, 2010 report, Dr. Christopher G. Kelley, a Board-certified orthopedic surgeon, noted appellant's past medical history and stated that on April 18, 2009 he was pulling chains on the back of a tank when he felt a noticeable "pop" in his left shoulder. Dr. Kelley

diagnosed shoulder impingement and noted on examination a positive Hawkins sign, positive impingement test and limited range of motion. He further noted that the MRI scan revealed bony impingement, possible small tear and fluid in bicep strength. Dr. Kelley opined that appellant's complaints were a direct result of the reported April 18, 2009 incident. He explained that although a full thickness tear was not present, the pulling or pushing movement of the stated injury was enough to cause the acromion to pinch the rotator cuff and cause the stated symptoms.

By decision dated February 26, 2010, the Office denied appellant's request for reconsideration without merit review.

LEGAL PRECEDENT -- ISSUE 1

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical 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 employee.⁴

ANALYSIS -- ISSUE 1

The Office accepted that appellant performed duties as a wood worker on October 26, 2009, lifting and stacking blocks of wood on a pallet. The Board finds that appellant failed to meet his burden of proof to establish that he sustained a shoulder injury causally related to these work duties on October 26, 2009.

The medical evidence appellant submitted in support of this claim does not establish that his work on October 26, 2009 caused or aggravated his left shoulder condition. The medical notes of record contain reference to an April 2009 left shoulder injury apparently sustained when

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant was putting chains on the back of a tank. None of the medical evidence of record addresses how the work activity on October 26, 2009 affected appellant's left shoulder.

The November 9, 2009 MRI scan report from Dr. Sateriale noted findings of acromioclavicular joint arthritis, shoulder pain and bony impingement.⁵ His report did not provide any opinion regarding the cause of the diagnosed condition. Dr. Sateriale did not provide a history of appellant's work duties on October 26, 2009 or explain how the lifting and stacking duties caused or aggravated appellant's left shoulder condition. As such his report was of diminished probative value and insufficient to establish causal relationship.

Appellant submitted various medical slips dated October 29 to December 14, 2009 from the Northeast Orthopedic Clinic, which listed the initials CGK, but did not identify the reports as those of a physician. These medical slips do not constitute probative medical evidence because there is no indication that a physician completed the reports. There is no evidence as to who prepared or reviewed these notes.

Appellant failed to meet his burden of proof to establish his claim because he did not submit probative medical evidence establishing a causal relationship between his left shoulder condition and his work duties on October 26, 2009.

LEGAL PRECEDENT -- ISSUE 2

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.⁶ 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.⁷

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 considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁸ A request for reconsideration must also be submitted within one year of the date of the Office's decision for which review is sought.⁹ When a claimant fails to meet

⁵ *Robert Broome*, 55 ECAB 339, 342, (2004).

⁶ 5 U.S.C. § 8128(a); *see also D.L.*, 61 ECAB __ (Docket No. 09-1549, issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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

⁸ 20 C.F.R. § 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).

⁹ 20 C.F.R. § 10.607(a).

one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record or does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ While reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹²

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's February 11, 2010 request for reconsideration because it did not meet any of the requirements under 20 C.F.R. § 10.606(b). Appellant did not allege that the Office erroneously applied or interpreted a specific point of law nor advance a relevant legal argument or submit relevant evidence not previously considered by the Office.

By decision dated January 21, 2010, the Office denied appellant's claim on the grounds of insufficient medical evidence establishing that any diagnosed condition resulted from the alleged October 26, 2009 work duties. On February 11, 2010 appellant filed a timely request for reconsideration. In a decision dated February 26, 2010, the Office denied appellant's request for reconsideration because the medical evidence failed to address the issue of whether appellant's alleged shoulder condition resulted from his work on October 26, 2009.

Appellant resubmitted medical evidence including the MRI scan of Dr. Sateriale's and the orthopedic clinic treatment slips. The submission of evidence which repeats or duplicates evidence already of record and considered by the Office does not constitute a basis for reopening a case. This evidence was insufficient to warrant further merit review.¹³

Appellant also submitted a February 5, 2010 report from Dr. Kelley who addressed an April 18, 2009 history of injury, not the October 26, 2009 incident as alleged in this claim. Dr. Kelley attributed appellant's shoulder condition to the April 18, 2009 activity not the October 26, 2009 incident as alleged.¹⁴ As such, this evidence is not relevant to the issue of whether the accepted incident caused his left shoulder condition. It does not constitute a basis for reopening appellant's case for further merit review. As appellant's request for

¹⁰ *Id.* at § 10.608(b).

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *James E. Norris*, 52 ECAB 93 (2000).

¹² *Jennifer A. Guillary*, 57 ECAB 485 (2006); *Vincent Holmes*, 53 ECAB 468 (2002).

¹³ *E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

¹⁴ Appellant was instructed that he could submit additional medical evidence regarding his alleged April 2009 left shoulder injury to the Office, pursuant to his prior claim of April 2009.

reconsideration did not meet any of the requirements warranting reconsideration, the Office's decision to deny reconsideration was proper.¹⁵

CONCLUSION

The Board finds that appellant did not establish that his left shoulder condition was causally related to the October 26, 2009 employment incident.¹⁶ The Board also finds that the Office properly denied merit review on February 26, 2010.

ORDER

IT IS HEREBY ORDERED THAT the February 26 and January 21, 2010 decisions of the Office of Workers' Compensation Program are affirmed.

Issued: March 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *S.J.*, 60 ECAB __ (Docket No. 08-2048, issued July 9, 2009); *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008).

¹⁶ The Board notes that appellant submitted additional evidence to the file following the February 26, 2010 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).