

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.N., Appellant**

**and**

**U.S. POSTAL SERVICE, PATRICK HENRY  
STATION, Newport News, VA, Employer**

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**Docket No. 10-1741  
Issued: March 15, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 18, 2010 appellant filed a timely appeal from a January 10 and April 27, 2010 nonmerit decisions of the Office of Workers' Compensation Programs denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these nonmerit decisions. The last merit decision of the Office was its November 4, 2009 Office decision concerning the denial of appellant's right shoulder claim. Because more than 180 days has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether the Office properly denied reopening appellant's claim for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that the Office erred in denying his request for a merit review and denying his right shoulder claim. He further contends that the evidence establishes that his employment duties were the cause of his right shoulder condition.

## **FACTUAL HISTORY**

On June 3, 2009 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that his right rotator cuff tear was due to his federal employment duties of carrying and delivering mail.

On September 3, 2009 Dr. Martin R. Coleman, a treating Board-certified orthopedic surgeon, diagnosed right rotator cuff damage due to appellant's work activities including heavy lifting. He noted that appellant's job duties required heavy lifting and appellant was not involved in strenuous activities outside of work. Dr. Coleman stated that appellant's condition was "probably a result of chronic work activities with heavy lifting and resulting damage to the cuff."

In a letter dated September 30, 2009, the Office noted the medical and factual evidence it had received and advised appellant that the record was insufficient to establish his claim. It requested that he submit additional evidence.

The Office subsequently received a May 18, 2009 magnetic resonance imaging (MRI) scan. It revealed a right anterior supraspinatus tendon insertional tear and acromioclavicular (AC) joint arthrosis with subacromial spurring. On June 4, 2009 Dr. Coleman reviewed the May 18, 2009 MRI scan and diagnosed a tear of the right anterior supraspinatus tendon. On June 5, 2009 he provided physical findings and diagnosed right shoulder impingement syndrome, rotator cuff tear and degenerative joint disease of the AC joint. Dr. Coleman noted normal right shoulder range of motion and shoulder strength.

By decision dated November 4, 2009, the Office denied appellant's claim finding that the medical evidence of record was insufficient to establish that his right rotator cuff tear was causally related to his work carrying mail.

In a letter dated November 22, 2009, appellant requested reconsideration and submitted an article on workplace dangers.

By decision dated January 10, 2010, the Office denied appellant's request for reconsideration without merit review.

In a letter dated February 23, 2010, appellant requested reconsideration and submitted a February 4, 2010 report from Dr. Coleman, who diagnosed a right shoulder rotator cuff tear due to his employment duties involving "ongoing strenuous maneuvers of the shoulders." Dr. Coleman stated that appellant's right shoulder symptoms and condition were a direct result of his employment duties due to "the lack of other trauma or activities, which could explain his worsening condition."

By decision dated April 27, 2010, the Office denied appellant's request for reconsideration of the merits. It found Dr. Coleman's report to be duplicative and repetitious of his prior opinion.<sup>1</sup>

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide 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.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

The Board has held that the submission of evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case.<sup>6</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

### **ANALYSIS**

Appellant claimed that he sustained a right shoulder condition due to his work as a letter carrier. The Office denied his claim finding the medical evidence insufficient on the issue of causal relation. Appellant disagreed with the Office's November 4, 2009 decision. He requested reconsideration by letters dated November 22, 2009 and February 23, 2010. The Office denied appellant's requests for further merit review on January 10 and April 27, 2010. The underlying issue was whether appellant submitted sufficient medical evidence to establish the causal

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<sup>1</sup> The Board notes that appellant submitted new evidence with his appeal to the Board. The Board may not consider new evidence for the first time on appeal. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, 60 ECAB \_\_\_\_ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>2</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>3</sup> 20 C.F.R. § 10.606(b)(2). *See J.M.*, 60 ECAB \_\_\_\_ (Docket No. 09-218, issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>4</sup> 20 C.F.R. § 10.607(a). *See S.J.*, 60 ECAB \_\_\_\_ (Docket No. 08-2048, issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>5</sup> 20 C.F.R. § 10.608(b). *See Y.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-440, issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>6</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

connection between his right shoulder condition and his employment duties. The Board finds that he did not submit any relevant or pertinent new evidence.

In support of his November 22, 2009 reconsideration request, appellant submitted an article on workplace dangers. His request did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Appellant did not advance any relevant legal argument not previously considered by the Office or submit any new and relevant evidence. The underlying issue is a medical question. Appellant did not submit any medical evidence with his request. Consequently, he was not entitled to a review of the his claim based on the requirements under section 10.606(b)(2).

Appellant requested reconsideration on February 23, 2010 and submitted a February 4, 2010 report from Dr. Coleman, who diagnosed a right shoulder rotator cuff tear caused by appellant's employment duties. This report is duplicative to Dr. Coleman's September 3, 2009 report, which was previously reviewed by the Office. The Board finds that it is insufficient to reopen appellant's claim for further merit review. The record contains no additional medical evidence submitted on reconsideration.

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered; or submit relevant and pertinent new evidence not previously considered by the Office. Appellant did not meet any of the regulatory requirements. The Office properly declined to reopen his claim for further merit review.<sup>8</sup>

### **CONCLUSION**

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

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<sup>8</sup> *A.K.*, 61 ECAB \_\_\_ (Docket No. 09-2032, issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, *supra* note 3 (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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 27 and January 10, 2010 are affirmed.

Issued: March 15, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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