

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

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V.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
High Point, NC, Employer )

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**Docket No. 12-92  
Issued: May 22, 2012**

*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 October 24, 2011 appellant filed a timely appeal from an October 12, 2011 nonmerit decision and a May 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant established that she sustained an injury in the performance of duty; and (2) whether OWCP properly denied her request to reopen her case for further review of the merits under section 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 15, 2011 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that she sustained right shoulder pain, stress and depression due to employment factors. She became aware of her condition and its relationship to her employment on February 12, 2011 and attributed her condition to boxing mail, putting up parcels and performing window duties from 6:00 a.m. until 1:00 p.m. without a break. Appellant noted that she had already filed a claim under File No. xxxxxx241. She stopped work on February 12, 2011.

On March 18, 2011 the employing establishment controverted appellant's claim. It related that she left work on February 12, 2011 after a manager tried to discuss her work performance. Appellant advised her manager that she was going to use sick leave and became loud and belligerent so the manager advised her that medical documentation would be required.<sup>2</sup> The employing establishment noted that she had a previously denied right shoulder claim assigned File No. xxxxxx465 and an emotional condition claim assigned File No. xxxxxx949. It maintained that appellant was trying to circumnavigate the system by filing additional forms for previously denied claims.

By letter dated March 25, 2011, OWCP requested that appellant provide a detailed description of the work factors that she believed caused or contributed to her condition, including any relevant dates, locations, events or duties. It further requested information regarding any grievances and sources of outside stress. OWCP additionally asked that appellant submit rationalized medical evidence from her attending physician explaining any relationship between a diagnosed condition and her employment.

In a report dated March 10, 2011, received by OWCP on April 19, 2011, Dr. Vincent E. Paul, a Board-certified orthopedic surgeon, discussed his prior treatment of appellant for a work-related shoulder condition which required surgery. He noted that she related that she had again injured her shoulder on February 12, 2011 "boxing mail and parcels at window service" without a break or lunch. Dr. Paul diagnosed a loose right shoulder capsule and found that appellant should be off work February 12 to May 12, 2011. In a duty status report of the same date, he found that she could not work.<sup>3</sup>

On April 6, 2011 Dr. Justin Chandler, an orthopedic surgeon, noted that appellant had a history of a work injury to her shoulder in 2001 and that she had been off work since February 2011. In an April 29, 2011 progress report, he related that she "initially had an injury back in 2001 at work and subsequently had reinjury at work in February of this year on February 12, 2011. Appellant had a long period of boxing and overhead work at the [employing establishment], which exacerbated her right shoulder and since that time, this has not improved." Dr. Chandler diagnosed a "high grade bursal sided rotator cuff tear with possible small full thickness tear" and recommended surgery.

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<sup>2</sup> In a statement dated March 17, 2011, appellant's supervisor related that he requested a meeting to discuss appellant's performance after her lunch on February 12, 2011. Appellant requested sick leave and became angry.

<sup>3</sup> In April 28 and July 14, 2011 duty status reports, Dr. Paul found that appellant was unable to work pending surgery.

On May 2, 2011 appellant filed a claim for compensation beginning February 12, 2011. On May 16, 2011 OWCP again informed her that the evidence was insufficient to establish her claim and referred to its March 25, 2011 letter requesting additional information.

By decision dated May 27, 2011, OWCP denied appellant's claim after finding that she did not establish fact of injury. It found that she failed to submit supporting factual information, including the date and place of injury as requested.

On August 24, 2011 appellant requested reconsideration. She related that she had surgery and was not working or receiving compensation. Appellant noted that she had two different claim numbers and asked that OWCP review both File No. xxxxx241 and the current file. She asserted that there should only be one file number.

By decision dated October 12, 2011, OWCP denied appellant's request for reconsideration after finding that she had not submitted evidence or raised an argument sufficient to warrant reopening her case for further merit review. It determined that she had not submitted any factual information relevant to the issue of whether her injury occurred as alleged. OWCP advised appellant that it was aware of her assigned File No. xxxxxx241, accepted for right shoulder sprain and arthritis with a date of injury of September 1, 2001, but found that the other file was not relevant to establishing any injury in the current case.<sup>4</sup>

On appeal, appellant argued that OWCP does not know which file number her claim should be assigned.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>5</sup> 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 FECA; 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed an occupational disease claim on March 15, 2011 contending that she experienced right shoulder pain, stress and depression causally related to her employment. She attributed her condition to boxing mail, putting up parcels and working at the window from 6:00

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<sup>4</sup> In File No. xxxxxx241, OWCP accepted that appellant sustained right shoulder strain and localized osteoarthritis due to a September 1, 2001 work injury. Appellant underwent multiple shoulder surgeries. In numerous decisions in 2001, OWCP denied her claim requesting compensation beginning February 12, 2011 and for various dates thereafter. It noted that it appeared that appellant was claiming a new injury on February 12, 2011.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> *Calvin E. King*, 51 ECAB 394 (2000); *Caroline Thomas*, 51 ECAB 451 (2000).

a.m. until 1:00 p.m. with no break or lunch. Appellant indicated that she became aware of her condition on February 12, 2011.

In a March 25, 2011 letter, OWCP requested that appellant provide additional factual information supporting her claim, including a description of the work factors she believed caused her condition supported by dates and locations and any sources of stress. Appellant did not, however, respond with any factual evidence. After she filed a claim for disability compensation beginning February 12, 2011, OWCP again notified her that the evidence was insufficient to establish her claim and referred her to its March 25, 2011 letter. It is appellant's burden of proof to submit a detailed description of the employment factors or conditions that she believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>7</sup> She has not submitted sufficient evidence for OWCP to determine whether she is claiming an occupational disease or traumatic injury<sup>8</sup> or provided a comprehensive description of the work factors and the conditions claimed as a result of any identified work factors.

Appellant submitted medical evidence from Dr. Paul, who in a report dated March 10, 2011 noted that she experienced increased shoulder pain after working on February 12, 2011 boxing mail and parcels without a break. On April 6, 2011 Dr. Chandler related that she had a reinjury to her right shoulder on February 12, 2011 after performing overhead work and boxing. Appellant, however, has not submitted factual evidence sufficient to establish that she actually experienced the claimed work factors. Consequently, the medical reports are based on a history of injury that has not been factually established and thus are of diminished probative value.<sup>9</sup>

On appeal, appellant argues that OWCP does not know which file number her claim should be assigned. The issue, however, is whether she has submitted sufficient evidence to show that she experienced the work factors alleged to have resulted in her condition. Appellant failed to provide the required factual evidence and thus failed to meet her burden of proof.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>11</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously

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<sup>7</sup> *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>8</sup> A traumatic injury is defined as a "condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

<sup>9</sup> *See Joseph M. Popp*, 48 ECAB 624 (1997).

<sup>10</sup> *See Barbara R. Middleton*, 56 ECAB 634 (2005); *Paul Foster*, 56 ECAB 208 (2004).

<sup>11</sup> 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application."

considered by OWCP.<sup>12</sup> To be entitled to a merit review of an OWCP 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>13</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>14</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>15</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>16</sup> While the 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.<sup>17</sup>

### ANALYSIS -- ISSUE 2

On August 24, 2011 appellant requested reconsideration. In her request for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted, nor did she submit pertinent new and relevant evidence not previously submitted. Moreover, she did not advance a new and relevant legal argument. In support of her reconsideration request and on appeal, appellant argued that she had two separate claim numbers which should both be reviewed and combined.<sup>18</sup> Her argument is not relevant to the underlying issue in the case at hand, which is whether she submitted sufficient factual evidence to establish that occurrence of the work factors identified as causing her condition. Evidence or argument that does not address the particular issue involved does not warrant reopening a case for merit review.<sup>19</sup> The Board accordingly finds that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

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<sup>12</sup> 20 C.F.R. § 10.606(b)(2).

<sup>13</sup> *Id.* at § 10.607(a).

<sup>14</sup> *Id.* at § 10.608(b).

<sup>15</sup> *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

<sup>16</sup> *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>17</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>18</sup> OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent. Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(a) (February 2000). In this case, however, appellant has not submitted sufficient evidence to establish the factual aspect of her claim and has not described the factors of employment to which she attributed her right shoulder pain, stress and depression. Consequently, OWCP does not have sufficient information to determine whether her claims should be combined.

<sup>19</sup> *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

**CONCLUSION**

The Board finds that appellant has not established that she sustained an injury in the performance of duty. The Board further finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under section 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12 and May 27, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2012  
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