

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 14-205
Issued: April 7, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2013 appellant, through her attorney, filed a timely appeal from an October 17, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from the last merit decision dated January 29, 2013 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

¹ For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

This is the second appeal before the Board. On May 22, 2012 appellant, a 52-year-old mail processor, filed a claim for a left shoulder sprain causally related to factors of her employment. By decision dated July 11, 2012, OWCP denied her claim, finding that she failed to establish fact of injury. It also found that appellant failed to submit sufficient medical evidence in support of her claim that she sustained a left shoulder condition due to her work activities.

In a report dated July 24, 2012, received by OWCP on December 13, 2012, Dr. Jaime Sabogal, Board-certified in orthopedic surgery, diagnosed cervical radiculopathy, spondyloarthropathy and sprain of the left shoulder and left upper arm. He advised that x-ray testing showed that appellant had impingement syndrome in her left shoulder. In a November 29, 2012 report, received by OWCP on January 4, 2013, Dr. Sabogal reiterated that his initial examination on July 24, 2012 was consistent with left shoulder impingement syndrome. He asserted that appellant's repetitive work duties caused her to overuse her left shoulder and made it more prone to injury. Dr. Sabogal opined that she had left shoulder impingement syndrome produced and aggravated by her work duties and that she required further treatment.

By decision dated January 29, 2013, OWCP's hearing representative found that appellant established that she was exposed to the claimed work factors. He found, however, that she failed to submit medical evidence sufficient to establish that she sustained a left shoulder condition in the performance of duty.

In a September 10, 2013 decision,² the Board affirmed the January 29, 2013 decision. The facts of this case as set forth in the Board's September 10, 2013 decision are incorporated by reference.

By letter dated September 23, 2013, counsel requested reconsideration. He submitted an October 7, 2013 brief which cited Board case law regarding fact of injury, causal relationship and disability.

In a September 23, 2013 form report, Dr. Sabogal reiterated the diagnosis of left shoulder impingement. He listed the dates of appellant's treatment, prescriptions and course of treatment.

By decision dated October 17, 2013, OWCP denied appellant's application for review. It found that she did not raise a substantive legal question or include new and relevant evidence sufficient to require further merit review.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.³ Evidence that repeats or duplicates

² Docket No. 13-856 (issued September 10, 2013).

³ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

ANALYSIS

The Board finds that appellant did not establish that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

Counsel submitted a brief to OWCP on October 7, 2013 citing to Board case law on causal relationship and contribution. The Board does not have jurisdiction over the merits of the case. Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law or advance a relevant new legal argument. The pleading is duplicative of a brief presented to the Board on the prior appeal, dated August 1, 2013.⁵

OWCP also received a new medical report. Dr. Sabogal's September 23, 2013 form report reiterated the diagnosis of left shoulder impingement. It included no rationalized medical opinion on causation. This evidence is also cumulative and duplicative.⁶ Counsel argued generally to OWCP that it erred in finding that appellant failed to submit medical evidence sufficient to establish a causal relationship between her left shoulder condition and the accepted employment factors. He contends that Dr. Sabogal's September 23, 2013 report is sufficient to establish causation. Dr. Sabogal's form report does not provide a sufficient basis to reopen appellant's claim for merit review as it is duplicative of his prior reports of record. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by it. OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits in its October 17, 2013 decision.

CONCLUSION

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

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See S.E.*, Docket No. 13-1931 (issued February 10, 2014).

⁶ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2014
Washington, DC

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

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

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