

ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 29, 2013 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2013 she sustained a bilateral shoulder injury when she placed a tub of magazines in a container while working on the flat sorter machine.⁴ She stopped working and first received medical care on January 27, 2013. Appellant's supervisor stated that she was unaware that appellant had an accident when appellant informed her that she had to leave because her shoulder was hurting.

In a January 27, 2013 discharge form, Dr. James Lee, an emergency room physician, diagnosed musculoskeletal shoulder pain.

In an April 17, 2013 narrative statement, appellant reported that she reinjured her left shoulder on January 27, 2013 when she felt a numbing sensation after placing a tub in the container that morning. She stated that the pain was severe which caused her to seek emergency medical treatment.

Medical reports dated April 25, 2012 to March 1, 2013 were submitted from Dr. Matthew D. Welsch, a Board-certified orthopedic surgeon. In an April 15, 2012 report, Dr. Welsch reported that appellant complained of left shoulder pain which she related to an injury which occurred in November 2011 at work. Appellant recalled lifting and pulling magazines in a tub off a conveyer when she felt a burning or pulling sensation in the left shoulder. Dr. Welsch diagnosed left shoulder rotator cuff tear and appellant underwent left shoulder arthroscopic rotator cuff repair on May 15, 2012. Treatment notes dated May 23 to October 15, 2012 noted appellant's improved progress post left shoulder rotator cuff repair. A November 26, 2012 report noted mild left shoulder swelling due to possible overuse.

In a February 8, 2013 report, Dr. Welsch reported that appellant returned for treatment after a recent injury that occurred about two weeks prior when she was lifting a tub at work and felt pain in her left shoulder. Appellant stated that she felt a pulling sensation across the shoulder and lateral neck without any popping sensation. Dr. Welsch noted appellant's prior May 15, 2012 left shoulder arthroscopic rotator cuff repair. Physical examination revealed no evidence of full-thickness tear. Dr. Welsch diagnosed left shoulder pain.

In a March 1, 2013 report, Dr. Welsch noted that appellant complained of more pain in the right shoulder than left which she believed was due to more right arm activity. X-rays of the right shoulder revealed mild acromioclavicular (AC) arthritis. Dr. Welsch diagnosed right

⁴ The Board notes that on August 17, 2012 appellant filed a Form CA-1 alleging a left shoulder injury on June 6, 2011 as a result of placing a tub of magazines into a container, claim No. xxxxxx932. By decisions dated October 1, 2012 and January 22, 2013, OWCP denied appellant's traumatic injury claim.

shoulder rotator cuff tendinitis and AC arthritis and status post left shoulder arthroscopic rotator cuff repair.

By decision dated May 15, 2013, OWCP denied appellant's claim finding that the medical evidence failed to establish that her injury was causally related to the accepted January 27, 2013 employment incident. It noted that she had established a firm medical diagnosis of right shoulder rotator cuff tendinitis, AC arthritis but failed to establish that it was causally related to the January 27, 2013 work incident. OWCP further noted that appellant failed to establish a firm medical diagnosis for the left shoulder as pain was not an acceptable diagnosis.

On August 27, 2013 appellant requested reconsideration of OWCP's decision.

In an April 10, 2013 medical report, Dr. Welsch diagnosed right shoulder rotator cuff tendinitis and AC arthritis and status post left shoulder arthroscopic rotator cuff repair.

By letter dated August 5, 2013, Dr. Welsch reported that he began treating appellant on April 25, 2012 for left shoulder pain that began after she was pulling magazines off of a conveyer at work. A magnetic resonance imaging (MRI) scan revealed rotator cuff tear and appellant underwent rotator cuff repair on May 15, 2012. Dr. Welsch noted that she did well postoperatively and experienced occasional soreness of the shoulder. He most recently evaluated appellate on April 10, 2013 and found that she was doing well with good range of motion and minimal pain. Dr. Welsch opined that her work injury caused a rotator cuff tear.

By decision dated September 16, 2013, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.⁵

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by 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 considered by OWCP.⁶ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

⁵ The Board notes that appellant submitted additional evidence after OWCP rendered its September 16, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁶ *D.K.*, 59 ECAB 141 (2007).

⁷ *K.H.*, 59 ECAB 495 (2008).

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her August 27, 2013 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. The underlying issue in this case was whether appellant's injury was causally related to the accepted January 27, 2013 employment incident. That is a medical issue which must be addressed by relevant medical evidence.⁸

While appellant submitted new medical reports dated April 10 and August 5, 2013 from Dr. Welsch whose April 10, 2013 report is essentially identical and repetitive of his March 1, 2013 report which was previously considered by OWCP. It is insufficient to reopen the case for review of the merits of appellant's claim.⁹ Dr. Welsch's August 5, 2013 report discusses appellant's prior April 25, 2012 diagnosis of left shoulder rotator cuff tear which he opined was caused by her work injury. This report is irrelevant and immaterial to the issue at hand as the physician's diagnosis and opinion on causation relates to a work incident and injury sustained prior to the January 27, 2013 employment incident.¹⁰

Appellant failed to provide a medical opinion that the January 27, 2013 employment incident caused her injury.¹¹ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹² Claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, while appellant submitted new evidence, it was not relevant in the issue in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

⁸ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393 (1984).

¹⁰ Claim No. xxxxxx932. See *D.B.*, Docket No. 12-376 (issued June 20, 2012).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹² *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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