

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

S.A., Appellant

and

**U.S. POST OFFICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 14-1745
Issued: December 18, 2014**

Appearances:
Richard A. Daniels, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 12, 2014 appellant filed a timely appeal of a May 13, 2014 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration without conducting a merit review. Because more than 180 days elapsed since the most recent merit decision, dated October 15, 2013, and the filing of this appeal on August 12, 2014, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On June 20, 2013 appellant, then a 58-year-old automation clerk, filed a Form CA-1, traumatic injury claim, alleging that on June 17, 2013 while sweeping mail from the top stackers

¹ 5 U.S.C. §§ 8101-8193.

she injured her right shoulder. She stopped work on June 17, 2013 and returned to a light-duty position.

Appellant was treated by Dr. Warren K. Churgen, a Board-certified internist, for right shoulder pain which appellant reported began on June 18, 2013. Dr. Churgen noted x-rays of the right shoulder revealed calcified bicep tendon and diagnosed bicipital tendinitis.

Appellant submitted reports from Dr. Michael J. Cunningham, a Board-certified orthopedist, who treated her from February 12 to March 28, 2013 for right wrist pain, numbness and tingling. Dr. Cunningham diagnosed right de Quervain's tenosynovitis and bilateral carpal tunnel syndrome. In reports dated June 24 to July 10, 2013, he treated appellant for right shoulder pain which flared up after several days of heavy, overhead work. Dr. Cunningham diagnosed right shoulder impingement syndrome with acute flare, possible rotator cuff tear, bilateral carpal tunnel syndrome, and right de Quervain's tenosynovitis. He administered steroid injections into the right shoulder and returned appellant to full-time work on March 28, 2013.

On June 20, 2013 appellant was treated by Dr. Johna Bingham, a Board-certified surgeon, for joint pain in the right shoulder. She reported reaching over her head at work repeatedly injuring her right shoulder. Dr. Bingham noted findings on examination of tenderness of the right shoulder with active range of motion. He diagnosed right shoulder pain and discharged appellant from his care. Appellant underwent physical therapy for the right shoulder from July 8 to 19, 2013. A magnetic resonance imaging (MRI) scan dated July 12, 2013 revealed extensive fluid and hypertrophic change at the acromioclavicular joint space, rotator cuff tear, and possible biceps peritendinitis.

On August 9, 2013 OWCP denied appellant's claim for compensation on the grounds that the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events.

On August 27, 2013 appellant requested reconsideration. She submitted reports from Dr. Cunningham dated July 18 and September 9, 2013. On September 9, 2013 Dr. Cunningham noted that appellant presented on June 24, 2013 with a flare-up of right shoulder pain which began three to four days earlier after a period of heavy, overhead work. He diagnosed right shoulder rotator cuff tear with impingement and bicipital tendinitis, bilateral carpal tunnel syndrome, and right de Quervain's tenosynovitis. Dr. Cunningham opined to a reasonable degree of medical certainty that the diagnosis of right rotator cuff tear was related to appellant's job activities noting she first experienced pain after performing repetitive duties at work.

In a decision dated October 15, 2013, OWCP denied modification of the decision dated August 9, 2013.

On February 27, 2014 appellant's representative requested reconsideration and asserted that she had provided sufficient medical evidence to establish that her right shoulder injury was causally related to her work duties. He referenced Dr. Cunningham's September 9, 2013 report which he alleged provided an accurate and detailed history of appellant's condition and demonstrated a thorough knowledge of her medical history. Appellant's representative asserted that Dr. Bingham provided a detailed and well-reasoned report and stated that to a reasonable

degree of medical certainty appellant's right shoulder cuff tear was the direct result of the work-related activity of June 17, 2013. Appellant submitted a June 20, 2013 report from Dr. Bingham, previously of record.

In a May 13, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP denied appellant's traumatic injury claim as the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events. Thereafter, it denied her reconsideration request without a merit review.

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 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. In her February 27, 2014 request, appellant's representative asserted that appellant had provided sufficient medical evidence to establish her right shoulder injury was causally related to her work duties. Appellant argued that Dr. Cunningham's September 9, 2013 report provided a detailed and well-reasoned opinion that to a reasonable degree of medical certainty appellant's right rotator shoulder cuff tear was the direct result of the

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

work-related activity of June 17, 2013. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant submitted medical evidence establishing that her right shoulder condition was causally related to the accepted work-related events. That is a medical issue which must be addressed by medical evidence.⁵ Appellant failed to submit any new and relevant medical evidence in support of her claim.

Appellant submitted a June 20, 2013 report from Dr. Bingham. However, this report is duplicative of evidence previously submitted and was considered by OWCP in its August 9, 2013 decision. 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.⁶ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

On appeal appellant's representative asserts that she submitted sufficient evidence to establish a right shoulder condition causally related to her employment duties and that OWCP improperly denied her reconsideration request. As explained, however, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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