

lift because of her shoulder pain. OWCP accepted appellant's claim for left shoulder rotator cuff syndrome on November 28, 2011.

Appellant filed claims for wage-loss compensation from November 18 through December 30, 2011. OWCP requested additional medical evidence in support of her claims on January 12, 2012. On October 31, 2011 appellant's attending physician, Dr. Peter Lum, Board-certified in physical medicine and rehabilitation, advised that appellant could not reach above the left shoulder and lift, carry, push or pull more than five pounds. He noted that light duty was accommodated and she returned to full-time work.

By decision dated February 15, 2012, OWCP denied appellant's claim for wage-loss compensation from November 18 through December 30, 2011. It found that Dr. Lum supported that she could perform full-time light-duty work.

On March 5, 2012 appellant requested a review of the written record by an OWCP hearing representative from the February 15, 2012 decision. She submitted a January 25, 2012 report by Dr. Stella W. Tadaki, a Board-certified internist, who found that appellant was not able to tolerate a full eight-hour shift. Appellant stated that she had been working only six hours a day because her pain became severe and her medications caused drowsiness. Dr. Tadaki reduced appellant's light duty to six hours a day.

In a note dated January 30, 2012, Dr. Lum stated that appellant could perform light duty from January 30 through February 29, 2012. He advised that she should work no more than six hours a day with no reaching above the left shoulder and no pushing, pulling, lifting or carrying more than five pounds. In a note dated February 7, 2012, Dr. Lum noted that appellant could work eight hours a day with restrictions. In a separate note of February 7, 2012, he advised that she should work only six hours a day with restrictions. Dr. Lum repeated his additional restrictions of working only six hours a day for the period February 24 through March 23, 2012 on February 24, 2012. He stated that appellant's medication made her drowsy.

Appellant filed additional claims for compensation. In a letter dated April 6, 2012, OWCP noted that she had requested 35.09 hours of intermittent leave without pay for the period February 25 through March 8, 2012. It requested additional medical evidence in support of these claims.

In a decision dated April 6, 2012, OWCP denied appellant's claim for compensation for the period February 25 through March 8, 2012. It issued a decision on May 14, 2012 again denying her claim for compensation for the period February 25 through March 8, 2012.²

On May 14, 2012 OWCP referred appellant to Dr. Steven A. Kaneshiro, a Board-certified orthopedic surgeon for a second opinion evaluation. On May 25, 2012 Dr. Naomi Morita, a Board-certified internist, released appellant to return to full duty.

² OWCP issued a second decision dated April 6, 2012 denying wage-loss compensation for the period January 28 to February 10, 2012.

On June 11, 2012 appellant requested a review of the written record pertaining to the May 14, 2012 OWCP decision.

On June 12, 2012 the hearing representative issued a decision affirming OWCP's February 15, 2012 denial of appellant's claim for compensation for total disability for the period November 18 through December 30, 2011, but modified the denial to reflect that she was entitled to four hours of compensation for each day that she received medical treatment during that period.

In a report dated March 5, 2012, Dr. Lum stated that appellant was off work from March 2 through 5, 2012 and on modified activity from March 6 through 27, 2012 working six hours a day. He noted that medications made her drowsy. Dr. Lum indicated that appellant could perform modified duty six hours a day from March 23 through April 27, 2012 in a note dated March 23, 2012.

On July 27, 2012 Dr. Kaneshiro noted appellant's history of injury on October 3, 2011 and her release to return to light-duty work on October 19, 2011 as well as her return to regular duty on April 29, 2012. On examination he found no objective findings to support ongoing residuals or disability. Dr. Kaneshiro diagnosed left shoulder rotator cuff tendinitis as a result of her October 3, 2011 employment injury. He found that appellant was currently able to perform her date-of-injury position and required no further medical treatment. Dr. Kaneshiro stated that she was totally disabled through October 13, 2011 and capable of modified work on October 14, 2011.

In a note dated April 25, 2013, Dr. Lum released appellant to perform full-duty work on April 29, 2012.

By decision dated October 16, 2012, the hearing representative found that the medical evidence did not establish that appellant was partially disabled for 35.09 intermittent hours between February 25 and March 8, 2012. She found that Drs. Lum and Tadaki did not provide adequate medical rationale to support their conclusions that appellant could not work eight hours a day for the period in question.

On October 10, 2013 appellant requested reconsideration. She submitted the March 5 and 23, 2012 notes from Dr. Lum, indicating that she should work six hours a day with restrictions from March 6 through 27 and March 23 through April 27, 2012. Appellant also submitted an April 25, 2012 note from Dr. Lum advising that she could return to full duty on April 29, 2012.

By decision dated October 23, 2013, OWCP declined to reopen appellant's claim for consideration of the merits on the grounds that the evidence submitted was repetitious.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³

³ 5 U.S.C. §§ 8101-8193, 8128(a).

Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant requested reconsideration of OWCP's hearing representative's October 16, 2012 decision denying intermittent periods of disability from February 25 through March 8, 2012 due to her accepted left shoulder injury. She submitted reports from Dr. Lum dated March 5, 23 and April 25, 2012. These reports were of record at the time of the hearing representative's October 16, 2012 decision and previously considered. As these reports are repetitious or duplicative of those already of record and previously reviewed by OWCP, they are not sufficient to require OWCP to reopen appellant's claim for reconsideration of the merits.⁶ The Board finds that she did not comply with the requirements of section 10.606(b) of OWCP's regulations and that OWCP properly declined to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on October 23, 2013.

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

⁶ *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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