

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

G.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Merrick, NY, Employer**

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**Docket No. 14-249
Issued: March 18, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 15, 2013 appellant filed a timely appeal from a September 19, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision of record is dated September 13, 2012. There is no merit decision within 180 days of November 15, 2013, the date appellant filed his appeal with the Board. Therefore, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, D.C. No written confirmation was received; thus the Board has decided the appeal on the record.

On appeal, appellant asserts that medical evidence establishes that he sustained an injury as claimed.

FACTUAL HISTORY

On July 23, 2012 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) claiming that earlier that day, he sustained left shoulder tendinitis when pulling down a jammed postal vehicle door. He stopped work that day. Appellant submitted a July 23, 2012 report from Dr. Andrew E. Farber, an attending osteopathic physician Board-certified in orthopedic surgery, who related appellant's account of injuring his shoulder while pulling down the vehicle door earlier that day. Dr. Farber diagnosed left shoulder tendinitis and prescribed physical therapy.

In an August 8, 2012 letter, OWCP advised appellant of the evidence needed to establish his claim, including a medical narrative from his attending physician explaining how and why the July 23, 2012 incident would cause the claimed left shoulder injury.

In response, appellant submitted August 7 and 20, 2012 reports from Dr. Farber, releasing him to full duty as of August 11, 2012 as his condition resolved with physical therapy. In an August 28, 2012 narrative report, Dr. Farber noted that a July 23, 2012 ultrasound examination of the left shoulder showed inflammation and possible partial tearing of the biceps tendon. Appellant was substantially improved as of August 21, 2012. Dr. Farber opined that appellant's "condition of left shoulder pain" was related to pulling the jammed door.

By decision dated September 13, 2012, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted that the July 23, 2012 incident occurred at the time, place and in the manner alleged. However, the medical evidence did not support a causal connection between the accident and any injury. OWCP noted that Dr. Farber diagnosed left shoulder pain was speculative about whether appellant sustained a biceps tendon injury. Also, he did not provide medical rationale to support any causal relationship.

In an October 29, 2012 letter, appellant requested reconsideration. He contended that Dr. Farber's diagnosis of left shoulder tendinitis was sufficient to meet his burden of proof. Appellant submitted July 23, August 7 and 21, 2012 reports from Dr. Farber diagnosing resolving left shoulder pain, improved with physical therapy. He also submitted physical therapy notes.

By decision dated January 29, 2013, OWCP denied reconsideration on the grounds that the new evidence submitted was cumulative and therefore insufficient to warrant a merit review. It found that Dr. Farber's reports were either duplicative or cumulative of his reports previously of record. OWCP further found that as the physical therapy notes were not signed by a physician, they did not constitute medical evidence and were therefore irrelevant to the claim.

In an undated letter received by OWCP on June 24, 2013, appellant requested reconsideration. He asserted that Dr. Farber's reports were sufficient to establish that he sustained left shoulder tendinitis on July 23, 2012. Appellant submitted copies of Dr. Farber's

July 23, August 7 and 21, 2012 reports. He also provided July and August 2012 physical therapy notes that were not signed or reviewed by a physician.

By decision dated September 19, 2013, OWCP denied reconsideration on the grounds that appellant's June 24, 2013 request did not contain new, relevant evidence or legal argument.

LEGAL PRECEDENT

To require the office to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(2) of Title 20 of the Code of Federal 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 considered by OWCP.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim 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.⁵

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

OWCP denied appellant's traumatic injury claim by decision dated September 13, 2012. It accepted that on July 23, 2012, appellant pulled a jammed vehicle door as alleged, but denied the claim as the medical evidence was insufficient to establish causal relationship between that incident and a left shoulder injury. In a January 29, 2013 decision, OWCP denied appellant's October 29, 2012 request for reconsideration on the grounds that the additional reports from Dr. Farber, an attending osteopathic physician Board-certified in orthopedics, were cumulative and that the physical therapy notes provided were not medical opinion evidence. Appellant again requested reconsideration on June 24, 2013, reiterating that Dr. Farber's reports were sufficient to establish his claim. He submitted copies of reports previously submitted and physical therapy notes not signed by a physician. OWCP denied reconsideration by decision

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

dated September 19, 2013 on the grounds that appellant's argument and the evidence submitted were cumulative or irrelevant.

In his June 24, 2013 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. He repeated his assertions that Dr. Farber's opinion was sufficient to establish causal relationship. Appellant also submitted duplicate copies of evidence previously of record. However, evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁹ The physical therapy notes do not constitute medical evidence as they were not signed or reviewed by a physician.¹⁰ As they are irrelevant to the crucial medical issue of causal relationship, the physical therapy notes do not warrant a merit review of the case.¹¹ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case.

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(2). He 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.

On appeal, appellant asserts that medical evidence establishes that he sustained an injury as claimed. This argument pertains to the merits of the claim, which are not before the Board on the present appeal.

CONCLUSION

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

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁰ *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2013 is affirmed.

Issued: March 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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