

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

G.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 14-1341
Issued: November 7, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 23, 2014 appellant filed a timely appeal of a December 16, 2013 merit decision and a February 14, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish partial disability for the period September 26 to 30, 2013 causally related to her accepted employment condition; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 19, 2009 appellant then a 50-year-old mail carrier, filed an occupational disease claim alleging right shoulder tendinitis and arthritis due to overuse while performing work duties. On July 10, 2009 OWCP accepted partial thickness tear and sprain of the right shoulder rotator cuff and upper arm. Appellant stopped work on March 11, 2009 and returned to work full-time modified duty on March 25, 2009.

Appellant submitted a May 19, 2009 right shoulder magnetic resonance imaging (MRI) scan which revealed moderate grade partial thickness, bursal-sided tear involving the critical zone of the supraspinatus tendon overlying bursitis. She was treated by Dr. Lloyd E. Robinson, a Board-certified physiatrist, from May 26, 2009 to January 20, 2010, for right shoulder rotator cuff tear. Appellant reported working overhead and experiencing right shoulder tenderness and range of motion impairment. In an August 7, 2009 duty status report, Dr. Robinson returned appellant to work full time with restrictions.

On June 24, 2010 appellant filed a claim for a schedule award. In a decision dated August 13, 2010, OWCP granted her a schedule award for five percent impairment of the right arm. The period of the award was from August 5 to November 22, 2010.

Appellant continued to be treated by Dr. Robinson from February 9, 2012 to March 26, 2013 for a torn right rotator cuff. In duty status reports dated March 26 and June 27, 2013, Dr. Robinson diagnosed severe tendinitis of the right shoulder and rotator cuff tear and noted that appellant could return to work full time with restrictions. On June 26, 2013 he treated appellant for right shoulder tendinitis and noted no significant changes. Dr. Robinson diagnosed rotator cuff tear. In a progress note dated October 1, 2013, he treated appellant for a right torn rotator cuff with pain. Right shoulder examination revealed restricted range of motion. Dr. Robinson diagnosed torn rotator cuff and recommended a recheck in three months. In a duty status report dated October 1, 2013, he noted clinical findings of severe tendinitis of the right shoulder and diagnosed torn rotator cuff. Dr. Robinson advised that appellant could resume work full time on October 3, 2013 subject to restrictions. In a return to work slip dated October 1, 2013, he noted treating appellant on October 1, 2013 and noted she was off since September 26, 2013. Dr. Robinson advised that appellant could return to work on October 3, 2013 subject to permanent restrictions.

On October 7, 2013 appellant filed a CA-7, claiming compensation for total disability from September 26 to October 2, 2013. She indicated that on September 26, 27, 30 and October 2, 2013 she had flare-ups of her condition and on October 1, 2013 she had a doctor's visit for a flare-up. In a CA-7a, time analysis form, the employing establishment confirmed the hours of leave without pay.

In a letter dated October 15, 2013, OWCP requested that appellant submit additional information with regard to her claim for total disability compensation. It asked that she submit medical evidence establishing total disability due to the accepted condition for the period claimed.

Appellant submitted a return to work slip from Dr. Robinson dated October 1, 2013, who noted that appellant was treated on October 1, 2013 and was “off since [September 26, 2013].” Dr. Robinson noted that appellant could return to work on October 3, 2013 and continue permanent restrictions. He further noted that appellant was off work due to worsened shoulder pain and sedative medications. Appellant also submitted a duty status report dated October 1, 2013, previously of record.

In a letter dated November 12, 2013, OWCP accepted appellant’s claim for compensation for the period October 1 to 2, 2010 and paid compensation in the amount of \$326.35. It advised that the other dates claimed were not supported by medical evidence and requested that she submit further medical evidence to support the disability for the remaining dates claimed within 30 days.

Appellant submitted an October 1, 2013 return to work slip from Dr. Robinson who noted appellant was treated that date and was “disabled from September 26 [to] October 2, 2013.” Dr. Robinson noted that appellant could return to work on October 3, 2012 under her permanent restrictions. He noted that she was disabled due to worsened shoulder pain and sedative medication.

In a decision dated December 16, 2013, OWCP denied appellant’s claim for compensation for total disability for the period September 26 to 30, 2013. It advised that the evidence of record fails to support disability during the period claimed.

Appellant requested reconsideration. In a January 16, 2014 statement, she asserted that she submitted sufficient medical evidence supporting disability for the period claimed pursuant to OWCP’s letters. Appellant indicated that the December 16, 2013 decision denied her claim for compensation for the entire period and she failed to receive payment for the days that were approved by OWCP. She submitted an October 1, 2013 return to work slip, OWCP’s October 15, 2013 letter, OWCP’s November 12, 2013 letter, and OWCP’s December 16, 2013 decision, all previously of record. Appellant submitted a January 9, 2014 note from Dr. Robinson which indicated that on October 1, 2013 appellant was provided information and a back to work note confirming that she was unable to work from September 26 to October 2, 2013 and could return to work on October 3, 2013 with the usual restrictions. In a January 9, 2014 progress note, Dr. Robinson noted treating appellant for chronic right shoulder pain secondary to a torn rotator cuff. He noted the examination findings were unchanged and diagnosed torn right rotator cuff and continued restricted duty. A January 9, 2014 duty status report from Dr. Robinson noted clinical findings of severe tendinitis of the right shoulder and diagnosed torn rotator cuff. He noted that appellant could resume work full time on January 9, 2014 subject to restrictions.

In a February 14, 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 -- ISSUE 1

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for

each period of disability claimed.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.³ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁴ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁵

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for partial thickness tear and sprain of the right shoulder rotator cuff and upper arm. Appellant returned to work full-time modified duty on March 25, 2009. The Board finds that the medical evidence is insufficient to establish that the total disability beginning September 26 to 30, 2013 was caused or aggravated by the accepted conditions.⁷

In an October 1, 2013 progress note, Dr. Robinson treated appellant for a right torn rotator cuff with pain. Right shoulder examination revealed restricted range of motion and he diagnosed torn rotator cuff. Dr. Robinson recommended a recheck in three months. In a duty status report dated October 1, 2013, he noted clinical findings of severe tendinitis of the right shoulder and diagnosed torn rotator cuff. Dr. Robinson noted that appellant could resume work full time on October 3, 2013 subject to restrictions. These reports are insufficient to establish appellant's disability claim as Dr. Robinson did not provide a history of injury⁸ and did not specifically address the cause of appellant's claimed disability beginning September 26, 2013.⁹

² See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Id.*

⁴ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ C.S., Docket No. 08-2218 (issued August 7, 2009).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁷ Although OWCP denied that appellant had total disability beginning from September 26 to 30, 2013, it did pay her wage-loss compensation for October 1 through 2, 2013 for wage loss incidental to medical appointments for treatment of her accepted condition. This payment is not at issue in the present appeal.

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁹ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant submitted several return to work slips from Dr. Robinson dated October 1, 2013. Dr. Robinson noted treating appellant on October 1, 2013 and noted that she was off since September 26, 2013. He noted that appellant could return to work on October 3, 2013 subject to permanent restrictions. Similarly, in another return to work slip dated October 1, 2013, Dr. Robinson noted treating appellant on October 1, 2013 and stated that she was “off since [September 26, 2013]” and “disabled from September 26 [to] October 2, 2013.” He noted that appellant could return to work on October 3, 2013 and continued permanent restrictions. Dr. Robinson noted that appellant was disabled from work due to worsened shoulder pain and sedative medications, but he did not specifically address the cause of the disability beginning September 26, 2013 or explain how any disability from September 26 to 30, 2013 was employment related. As noted, part of appellant’s burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.¹⁰ Therefore these reports are insufficient to meet appellant’s burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,¹¹ 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 which:

“(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.”¹²

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.¹³

ANALYSIS -- ISSUE 2

OWCP denied appellant’s claim for compensation for total disability for the period September 26 to 30, 2013 because the medical evidence failed to establish a connection to the

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *Id.* at § 10.608(b).

accepted condition. Thereafter, OWCP denied appellant's 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. She 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.

In her January 16, 2014 reconsideration request, appellant asserted that she had submitted sufficient medical evidence supporting disability for the period claimed. She indicated that the December 16, 2013 decision denied her claim for compensation for the entire period but she was entitled to receive payment for the two days (October 1 and 2, 2013) that were approved by OWCP. 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 she was totally disabled due to the accepted condition for the period claimed. That is a medical issue which must be addressed by relevant new medical evidence.¹⁴ However, appellant did not submit any new and relevant medical evidence in support of her claim.

Appellant submitted an October 1, 2013 return to work slip, several OWCP letters and OWCP's decision dated December 16, 2013, all previously of record. However, these documents are insufficient to reopen the claim as they are duplicative of evidence previously considered by OWCP. 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.¹⁵ Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a note from Dr. Robinson dated January 9, 2014 which indicated that on October 1, 2013 appellant was provided with a back to work note finding her unable to work from September 26 to October 2, 2013 but could return to work on October 3, 2013 with the usual restrictions. However, this report is identical to Dr. Robinson's other progress notes and return to work slips dated October 1, 2013 previously submitted and considered by OWCP in its decision dated December 16, 2013.¹⁶ In a January 9, 2014 progress note, Dr. Robinson treated appellant in follow up for chronic right shoulder pain secondary to a torn rotator cuff. He noted that the examination findings were unchanged and diagnosed torn right rotator cuff and continued restricted duty. Also submitted was a January 9, 2014 duty status report in which Dr. Robinson noted clinical findings of severe tendinitis of the right shoulder and diagnosed torn rotator cuff. He noted that appellant could resume work full time on January 9, 2014 subject to

¹⁴ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁵ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁶ *Id.*

restrictions. However, these reports, while new, are not relevant because they do not specifically address the issue of whether appellant was totally disabled from September 26, 2013 to 30, 2013 causally related to the work injury. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.¹⁷ Thus, these reports are 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). 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 constitute 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 she submitted sufficient medical evidence supporting disability for the period claimed. She indicated that her physicians indicated that she could have flare-ups that would cause her to be temporarily totally disabled. Appellant noted experiencing chronic pain which limited the use of her shoulders but she continued to report for duty. The Board notes that appellant failed to submit rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.¹⁸ While Dr. Robinson opined that appellant was totally disabled from work, he did not specifically explain how that disability from September 26 to 30, 2013 was employment related.

CONCLUSION

The Board finds that appellant has failed to establish that her disability for the period beginning September 26 to 30, 2013 was causally related to the accepted employment injury. The Board further finds that OWCP properly denied her request for reconsideration.

¹⁷ *Johnnie B. Causey*, 57 ECAB 359 (2006).

¹⁸ *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2014 and December 16, 2013 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: November 7, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board