



## **ISSUE**

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

## **FACTUAL HISTORY**

On April 12, 2012 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim, alleging that on January 9, 2012 she injured her right shoulder and biceps when she slipped while stepping off a porch.

An April 13, 2012 duty status report (Form CA-20) noted an injury date of January 9, 2012 and diagnosis of right shoulder strain.<sup>4</sup>

On May 15, 2012 appellant filed a recurrence claim only for medical treatment as a result of the January 9, 2012 incident.

In a May 16, 2012 letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

Appellant submitted additional evidence. In a report dated April 13, 2012, Dr. Jonathan Beach, a treating osteopath, diagnosed shoulder and wrist sprains. He related that appellant sustained a work injury on January 9, 2012 when she slipped on ice while delivering mail and landed on her right arm. Appellant was seen for complaints of pain in her right arm, shoulder and wrist. A physical examination revealed full arm and shoulder range of motion and pain on abduction with resisted motion.

In a May 10, 2012 note and report, Linda R. Bailey, a nurse practitioner, diagnosed right shoulder tendon tears and provided work restrictions. In the report, the nurse provided physical examination findings, provided magnetic resonance imaging (MRI) scan study findings and noted the history of the January 9, 2012 incident at work.

In a May 24, 2012 report, Dr. Stephane Mulligan, an examining Board-certified orthopedic surgeon, provided physical examination findings and an x-ray interpretation. She related that a May 1, 2012 MRI scan reported full thickness supraspinatus tendon tear and subscapularis torn tendon with medial biceps displacement. Appellant stated that she injured her right shoulder on January 9, 2012 when she landed on her right arm after slipping on some stairs. Under assessment/plan, Dr. Mulligan reported findings of right shoulder possible full thickness supraspinatus tendon tear and biceps tendon subscapularis with medial migration. She indicated that appellant possibly had some tearing of her rotator cuff.

By decision dated June 21, 2012, OWCP denied appellant's claim on the grounds that she failed to establish a causal relationship between the right shoulder and wrist conditions and the January 9, 2012 employment incident.

On July 19, 2012 appellant requested reconsideration.

---

<sup>4</sup> The physician's signature is illegible.

By decision dated October 16, 2012, OWCP denied modification.

On January 8, 2013 appellant's counsel requested reconsideration. In support of her request, appellant submitted affidavits from Dr. Beach and Lee Ackley, a physician's assistant. In the affidavit, Dr. Beach opined that appellant's right shoulder injuries were caused by her January 9, 2012 work incident based on his examination and history given by appellant.

By decision dated February 19, 2013, OWCP denied reconsideration.

On June 11, 2013 counsel requested reconsideration and resubmitted a November 2012 affidavit from Dr. Beach and Mr. Ackley.

Subsequent to the June 11, 2013 reconsideration request, OWCP received a July 26, 2012 progress note of Dr. Mulligan in which he noted a January 9, 2012 work injury and provided work restrictions and range of motion findings.

By decision dated September 12, 2013, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>5</sup> OWCP's 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.<sup>6</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>7</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### **ANALYSIS**

On June 11, 2013 appellant's counsel requested reconsideration. However, the reconsideration request did not show that OWCP erroneously applied or interpreted a point of law and did not advance a relevant legal argument not previously considered. Moreover, it did not include pertinent and new medical evidence. In this regard, the November 2012 affidavit submitted with her request for reconsideration is duplicative of the affidavit previously submitted with her January 8, 2013 reconsideration request. OWCP considered this evidence in its February 19, 2013 decision when it denied modification. The Board has held that evidence

---

<sup>5</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

<sup>6</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>7</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>8</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.<sup>9</sup> Thus, this affidavit does not constitute relevant and pertinent new medical evidence and is insufficient to require OWCP to reopen appellant's case for further review of the merits.

The Board finds that appellant did not meet any of the regulatory requirements of 20 C.F.R. § 10.606(b)(3) and, thus, OWCP properly declined to reopen her claim for further merit review.<sup>10</sup>

### **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 decision of the Office of Workers' Compensation Programs dated September 12, 2013 is affirmed.

Issued: October 9, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>9</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

<sup>10</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (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).