

FACTUAL HISTORY

On May 16, 2013 appellant, then a 42-year-old heavy mobile equipment repair inspector, filed an occupational disease claim alleging that his work as an automobile paint and body mechanic caused pain in both shoulders, the right shoulder greater than the left. He attributed his shoulder condition to the use of air powered tools and painting long periods of time on vehicles holding paint gun at all angles. Appellant first realized his condition and that it was caused or aggravated by his employment on January 1, 2000. The claim form did not indicate that appellant had stopped work.

By decision dated July 23, 2013, OWCP denied the claim as the medical evidence failed to establish that the claimed medical condition was causally related to the established work-related events.

Appellant requested reconsideration on September 12, 2013 and submitted a September 3, 2013 report from Dr. John E. Harris, a Board-certified family practitioner. Based upon an April 27, 2012 magnetic resonance imaging (MRI) scan study, Dr. Harris diagnosed evidence of partial thickness tear or tendinitis in the distal end of the supraspinatus tendon, tendonosis in the distal end of the infraspinatus tendon, superior glenoid labral tear or degenerative change, and degenerative or arthritic changes in the acromioclavicular joint. He noted that appellant had no shoulder injuries prior to his federal employment. Dr. Harris concluded that, based upon appellant's job description and his self-reported work history, the type of work appellant performed would cause musculoskeletal damage.

By decision dated December 13, 2013, OWCP denied modification of its July 23, 2013 decision. It found that the report of Dr. Harris was insufficient as it failed to provide a rationalized discussion based on objective findings as to the relationship, if any, of appellant's shoulder condition and his work activities.

On April 14, 2014 OWCP received appellant's April 2, 2014 request for reconsideration. In support of his request, appellant submitted February 13 and April 2, 2014 letters, a February 20, 2014 medical report, and a March 18, 2014 work excuse report from Dr. David L. Gilliam, a Board-certified orthopedic surgeon.

By decision dated July 2, 2014, OWCP denied modification of its December 13, 2013 decision. It found Dr. Gilliam's reports were of diminished probative value as he failed to provide a well-reasoned medical opinion identifying a specific diagnosis and the etiology of the diagnosis. OWCP again found that he failed to provide a detailed discussion of any possible preexisting degenerative process or shoulder conditions, nor a rationalized discussion based on objective findings as to the relationship, if any, of appellant's shoulder condition and his work activities.

On August 28, 2014 OWCP received appellant's August 25, 2014 request for reconsideration. In support of his request, appellant submitted an August 11, 2014 statement wherein he alleged that the reports from Dr. Harris and Dr. Gilliam established his claim, and a duplicative copy of Dr. Harris' September 3, 2013 report.

By decision dated October 9, 2014, OWCP denied reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP regulations provide that the evidence or argument submitted by 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 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.⁵

ANALYSIS

The Board has no jurisdiction to review the merits of appellant's claim. The most recent decision on the merits of his claim was OWCP's July 2, 2014 decision denying modification of its prior decision. Appellant had 180 days to appeal the July 2, 2014 decision to the Board,⁶ but he did not do so. The Board therefore lacks jurisdiction to review the merits of his claim.

The underlying issue on reconsideration is whether appellant has submitted sufficient medical evidence to establish causal relationship between his work activities and his shoulder conditions. Appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Appellant's statement further explaining his employment and his own opinion that the reports from Dr. Harris and Dr. Gilliam established his claim did not constitute relevant medical evidence pertinent to the underlying issue of causal relationship.⁷ Therefore, it is not sufficient to require OWCP to reopen his claim for consideration of the merits.

The Board also finds that he did not provide any relevant or pertinent new medical evidence warranting the reopening of the case on the merits. Dr. Harris' September 3, 2013 medical report was previously reviewed in OWCP's December 13, 2013 decision. This duplicative medical report was insufficient to reopen appellant's claim for further merit review.⁸ The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered, or constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the

³ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at § 501.3.

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ *M.W.*, Docket No. 15-499 (issued April 10, 2015).

regulatory requirements and OWCP properly declined to reopen his claim for further merit review.⁹

On appeal appellant asserts that he had no knowledge of the three-year statutory time period for filing his claim. However, given the occupational nature of his claim, OWCP has determined that the claim was timely filed.¹⁰ Appellant's claim was not denied based on timeliness.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2015
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

⁹ *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (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).

¹⁰ The time limitation begins to run on the date of last exposure to the implicated employment factors. *See W.L.*, 59 ECAB 362 (2008).