



## **FACTUAL HISTORY**

On December 2, 2013 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on September 9, 2013 she first became aware that her right rotator cuff tear was employment related.

In support of her claim, appellant submitted disability notes covering the period September 25 to November 27, 2013 from Dr. Manish A. Patel, a treating Board-certified orthopedic surgeon; a September 25, 2014 magnetic resonance imaging (MRI) scan; disability and referral notes dated September 11 and 18, 2013 by Stefan Brecke, a physician assistant, who diagnosed right shoulder acute muscle sprain; and a September 12, 2013 disability note with a diagnosis of right shoulder strain by James Rhee, a physician assistant.

By correspondence dated December 24, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested information.

In response to OWCP's request for additional evidence, appellant submitted a December 11, 2013 Certification of Health Care Provider for Employee's Serious Health Condition form, physical therapy notes, an October 16, 2013 surgery report, a January 3, 2012 narrative statement,<sup>3</sup> and the medical evidence set forth below.

In an undated report, Dr. Patel noted treatment dates and that right shoulder arthroscopic and rotator cuff repair surgery had been performed on October 16, 2013. He noted that appellant's symptoms and that a review of her MRI scan revealed complete supraspinatus tendon tear, which he opined had caused a complete rotator cuff rupture. In concluding, Dr. Patel opined that her condition could have been aggravated by her work activity.

In reports dated September 10 and 25 and October 25, 2013, Dr. Patel reported that appellant had been seen on September 10, 2013 after she heard her shoulder pop while navigating her automobile through a parking lot. Physical examination findings were provided. Dr. Patel diagnosed a complete right shoulder rotator cuff rupture and tear. An October 3, 2013 right shoulder arthrogram showed right shoulder rotator cuff tear.

Dr. Patel, in a November 27, 2013 report, noted that appellant was seen following her right shoulder arthroscopic surgery and provided physical examination findings. He diagnosed a complete rotator cuff rupture.

By decision dated April 15, 2014, OWCP denied appellant's claim as it found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed right shoulder rotator cuff rupture and her employment.

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<sup>3</sup> The date on the statement appears to be a typographical error as the date is January 3, 2013 and appellant refers to work events beginning on September 2, 2013.

In a form dated May 7, 2014, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated November 12, 2014, an OWCP hearing representative affirmed the denial of appellant's claim.

On April 16, 2015 OWCP received appellant's April 10, 2015 form requesting review of the written record by an OWCP hearing representative. The postmark on the attached envelope was April 13, 2015.

By decision dated May 11, 2015, OWCP denied appellant's request for review of the written record as it found that appellant had already requested a review of the written record and that a decision on review of the written record was issued on November 12, 2014. As such, appellant was not entitled to another review of the written record on the same issue as a matter of right. OWCP exercised its discretion and denied her second request for a review of the written record as it found that the issue involved in the case could be addressed equally well on reconsideration by submitting medical evidence establishing that the claimed medical condition was causally related to her employment.

### **LEGAL PRECEDENT**

Any claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.<sup>4</sup> A request for a hearing or review on the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.<sup>5</sup> If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. OWCP regulations further provide that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>6</sup> Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.<sup>7</sup> Similarly, the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review on the written record on the same issue.<sup>8</sup>

### **ANALYSIS**

By decision dated April 15, 2014, OWCP found that appellant failed to establish that the diagnosed medical condition was causally related to her employment duties. On a form dated

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<sup>4</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at 10.616(a).

<sup>6</sup> *Id.*

<sup>7</sup> *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

<sup>8</sup> *Supra* note 5.

May 7, 2014, appellant requested a review of the written record using the appeal request form that accompanied OWCP's April 15, 2014 merit decision. By decision dated November 12, 2014, an OWCP hearing representative affirmed the denial of her claim.

On April 16, 2015 OWCP received a form dated April 10, 2015, postmarked April 13, 2015, requesting a review of the written record of the November 12, 2014 decision. By decision dated May 11, 2015, it denied appellant's request for a review of the written record as she had previously requested and received a review of the written record. Thus, OWCP found that she was not entitled to a review of the written record as a matter of right. The Board agrees that appellant was not entitled to a review of the written record as a matter of right as she had previously requested and received a review of the written record by an OWCP hearing representative.<sup>9</sup>

The Board finds that OWCP properly exercised its discretion in denying appellant's request for another review of the written record by determining that the issue in the case could be addressed equally well by requesting reconsideration and submitting new evidence relevant to the issue at hand.<sup>10</sup> The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.<sup>11</sup> There is no evidence in the current case that OWCP abused its discretion in denying appellant's request for a review of the written record under these circumstances. The Board finds that OWCP acted properly in denying appellant's April 10, 2015 request for review of the written record.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the written record.

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<sup>9</sup> 20 C.F.R. § 10.616(a). See also *D.E.*, *supra* note 7.

<sup>10</sup> *Hubert Jones, Jr.*, *supra* note 7; *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>11</sup> See *M.C.*, Docket No. 09-2314 (issued August 20, 2010); *Claudia Vazquez*, 52 ECAB 496 (2001); *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board