

FACTUAL HISTORY

On May 5, 2014 appellant, then a 55-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that as a result of casing mail and reaching for mail at or above shoulder height, he suffered from right and left shoulder discomfort. He stopped work on April 30, 2014.

In support of his claim, appellant submitted medical evidence. These items included medical reports dated May 5 and 23, 2014 wherein Dr. Daniel R. Wild, a Board-certified orthopedic surgeon, indicated that appellant worked for the employing establishment and abruptly developed rather severe pain and restricted range of motion in his shoulder, which occurred during the normal course of employment. He noted that since that time appellant has had rather marked loss of mobility in his shoulder, with severe weakness and inability to raise his arm up over his head. Dr. Wild excused appellant from work and requested that a magnetic resonance imaging (MRI) scan be performed.

In a June 11, 2014 attending physician's report (Form CA-20), Dr. Wild diagnosed appellant with rotator cuff sprain and checked a box marked "yes" to note that he believed that the condition was caused or aggravated by appellant's employment activity. He noted that appellant was 100 percent totally disabled due to a right shoulder injury he sustained at work on April 30, 2014. Dr. Wild's also submitted progress notes.

Appellant submitted results of a shoulder x-ray taken on April 30, 2014 that was interpreted by Dr. Jayant G. Kale, a Board-certified radiologist, as normal.

By decision dated July 30, 2014, OWCP denied appellant's claim. It determined that he failed to establish a causal relationship between the medical diagnosis of rotator cuff sprain and the accepted factors of federal employment.

Thereafter, on September 2, 2014 OWCP received an April 30, 2014 report from Heidi Cornell, a nurse practitioner. This report related that appellant had experienced right shoulder complaints for the past two months. An assessment was offered of right shoulder pain, and noted that appellant should follow up with Dr. Wild and avoid lifting over 10 pounds.

On July 29, 2015 appellant, through counsel, requested reconsideration. In support thereof, counsel resubmitted the May 5 and 23, 2014 reports from Dr. Wild and the April 30, 2014 x-ray report.

By decision dated September 22, 2015, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.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

OWCP found that appellant established that he suffered a rotator cuff sprain and that the working condition occurred as alleged. However, it denied his claim because he had not submitted medical evidence establishing a causal relationship between the accepted medical condition and the accepted factors of his federal employment.

The Board finds that appellant has not submitted sufficient evidence with his reconsideration request that is sufficient to warrant merit review. OWCP received a September 2, 2014 report from Ms. Cornell, a nurse practitioner. However, this report is not pertinent to the issue of causal relationship. The Board has held that nurse practitioners are not considered physicians under FECA.⁶ Registered nurses, licensed practical nurses, physician assistants, and physical therapists are not physicians as defined under FECA and their opinions are of no probative value.⁷ Consequently, the nurse practitioner's report does not constitute relevant and pertinent new evidence not previously considered by OWCP.⁸

Appellant also resubmitted evidence already in the record, including the May 5 and 23, 2014 reports and progress notes by Dr. Wild and the April 30, 2014 x-ray report. The Board has found that evidence which is repetitive, duplicative, or cumulative in nature is insufficient to

² *Supra* note 1. Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *See* 5 U.S.C. § 8101(2) which provides: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law; *see also* *Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁷ *L.B.*, Docket No. 09-2183 (issued May 4, 2010).

⁸ *Id.*

warrant reopening a claim for merit review.⁹ Accordingly, appellant did not submit relevant and pertinent new evidence with his request for reconsideration.¹⁰

Furthermore, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law and has not advanced a relevant legal argument not previously considered by OWCP.

Accordingly, the Board finds that he did not meet any of the necessary requirements and is not entitled to further merit review.¹¹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review on 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 22, 2015 is affirmed.

Issued: April 15, 2016
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

⁹ *J.B.*, Docket No. 14-1164 (issued November 20, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁰ *L.B.*, Docket No. 09-2183 (issued May 4, 2010).

¹¹ *See L.H.*, 59 ECAB 253 (2007).