

should have been accepted as causally related to the accepted employment injury as of October 1, 2014.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's claim for reconsideration on the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 31, 2013 appellant, a 59-year-old pipefitter, slipped on a wet floor and injured his right shoulder. He filed a claim for a traumatic injury (Form CA-1) on August 20, 2013, which OWCP accepted for right shoulder sprain.

In a report dated August 12, 2013, Dr. James E. Henry, an osteopath and a specialist in orthopedic surgery, examined appellant and diagnosed right shoulder sprain. Appellant underwent radiographic testing, the results of which showed no fracture, dislocation, or tumor.

In a follow-up report dated October 30, 2013, Dr. Henry advised that appellant underwent a magnetic resonance imaging (MRI) scan of his right shoulder which showed that he had a partial tear of the supraspinatus, degenerative in nature; a full-thickness tear of the subscapularis tendon with medial subluxation of the biceps tendon; and acromioclavicular joint arthritis with subacromial bursitis. He recommended that appellant undergo surgery in light of the fact that he had not responded well to physiotherapy. Dr. Henry advised that he was formally requesting authorization from OWCP for the proposed surgery.

In a November 20, 2013 report, Dr. Henry advised that appellant was unable to return to work at that time because he was scheduled to undergo right shoulder surgery on December 5, 2013. He reported that, following the surgery, appellant was expected to miss work for an additional two to three months while he underwent a course of rehabilitation.

On November 20, 2013 OWCP authorized appellant's request for right shoulder surgery.

On December 5, 2013 Dr. Henry performed right shoulder surgery on appellant. Appellant underwent an arthroscopic procedure, a debridement of biceps tendon and labral debridement, to repair tears of the supraspinatus and subscapularis right shoulder, biceps tenosynovitis, labral tear, and acromioclavicular impingement.

On December 11, 2013 appellant filed a claim for a recurrence of disability (Form CA-2) alleging that his inability to work as of November 19, 2013 was caused or aggravated by his accepted July 31, 2013 employment injury. By decision dated January 10, 2014, OWCP accepted the claim for a recurrence of disability and formally authorized appellant's right shoulder surgery. Appellant was placed on the periodic rolls on January 17, 2014.

On June 24, 2014 Dr. Henry performed a second surgery on appellant to repair a recurrent tear of the right rotator cuff.

On October 22, 2014 appellant filed a new claim for a recurrence of disability, alleging that his inability to work as of September 29, 2014 was caused or aggravated by his accepted

July 31, 2013 employment injury. He indicated on the claim form that the recurrence occurred on September 29, 2014 when he opened a sliding window and his right shoulder began to hurt again. The employing establishment controverted the claim. It noted on the form that the duties of appellant's light-duty job did not include working at a station with a sliding window, nor did they require strenuous straining or physical activity. Rather, appellant's duties only included directing people to facilities and serving as a visitor contact person. The employing establishment further asserted that, although he reported that he sustained a recurrence of disability while opening a window on September 29, 2014, appellant did not begin his light-duty assignment until October 1, 2014 and did not consult a physician until October 22, 2014.

By letter dated November 5, 2014, OWCP advised appellant that its records indicated that, following his original injury/illness, he had returned to light-duty work on October 1, 2014 and had subsequently stopped work completely. It noted that the exact date he stopped work was unclear. OWCP advised appellant that it had not received any supporting documentation with his claim form. It requested that he provide additional factual and medical evidence, including medical evidence establishing that his accepted work-related conditions subsequently worsened without intervening cause. Appellant was afforded 30 days to submit this additional evidence.

In a November 14, 2014 report, Dr. Henry advised that appellant continued to have right shoulder pain after his second surgery of June 24, 2014. He noted that appellant was no longer working and that he had applied for social security disability. Dr. Henry reported that he was still recovering from the second surgery, but did not have recurrent rotator cuff tear. He diagnosed advanced arthritis of the right shoulder with severe tissue degeneration and did not recommend a third surgery or an additional MRI scan. Dr. Henry advised that he hoped to increase appellant's ability to perform activities of daily living.

On December 8, 2014 appellant submitted a Form CA-7 requesting wage-loss compensation from October 6 to December 12, 2014.

In a December 9, 2014 report, Dr. James Kipnis, a specialist in orthopedic surgery, advised that appellant was experiencing pain due to a work-related right shoulder condition. He requested authorization for an additional MRI scan of the right shoulder as appellant had a possible recurrent tear with some degenerative findings and was not tolerating physical therapy because of the pain.

By decision dated December 19, 2014, OWCP denied the claim for a recurrence of disability, commencing September 29, 2014. It noted that although appellant had indicated on his October 22, 2014 Form CA-2a that the date he sustained recurrence of disability was September 29, 2014, he was still on the periodic rolls on that date and was still receiving compensation for total disability at that time. OWCP also noted that he indicated on the form that the recurrence occurred on September 29, 2014 when he opened a sliding window and his right shoulder began to hurt again. It found that appellant did not return to work on light duty until October 1, 2014. The decision further related that the evidence of record from September 17, 2014 found that he could work with restrictions for four hours a day, and therefore he had returned to work for four hours a day on October 1, 2014. Medical evidence dated November 14, 2014 indicated that appellant did not have a recurrent rotator cuff tear, but rather had advanced arthritis of the shoulder, with severe degeneration. Therefore OWCP found

that the medical evidence of record did not support disability due to the accepted condition of right shoulder strain.

By letter dated February 11, 2015, appellant, through counsel, requested reconsideration of the December 19, 2014 decision. He asserted that OWCP's December 19, 2014 decision warranted reconsideration on the additional basis that appellant sustained a recurrence of disability beginning October 6, 2014. Counsel argued that the medical evidence of record established that the recurrence of his total disability starting October 6, 2014 was sustained as a result of injuries and conditions causally related to the July 31, 2013 work injury. He further argued that OWCP failed to accept all of the medical conditions which were causally related to appellant's July 31, 2013 employment injury.

In a December 31, 2014 report, Dr. Kipnis noted that he was treating appellant for torn right rotator cuff. He advised that appellant was experiencing severe pain in his right shoulder and had undergone a right shoulder MRI scan which showed a tear of the long head of the biceps and a recurrent full-thickness tear of the rotator cuff involving the entire subscapularis tendon with retraction.

In a report dated January 9, 2015, Dr. Henry noted that appellant had attempted to treat his right shoulder conservatively, but had ultimately underwent open rotator cuff repair, acromioplasty, arthroscopic labral debridement, and Mumford resection of the distal clavicle on December 5, 2013. He noted that appellant experienced a setback in his right shoulder and was experiencing increasing right shoulder pain as of March 7, 2014. Dr. Henry opined that the recurrence of appellant's right rotator cuff tear was a direct result of the July 31, 2013 work incident. He advised that appellant had reached maximum medical improvement but that he might require additional treatment in the future such as additional surgery, palliative physical therapy, nonsteroidals, and possible cortisone injections. Dr. Henry also opined that appellant was permanently disabled with regard to his right shoulder and was not capable of returning to his usual job as a plumber due to the physical demands of that trade.

In a January 19, 2015 report, Dr. Kipnis noted that appellant continued to experience pain and limited mobility in his right shoulder. He noted on examination that appellant had swelling as well as clicking and popping in the shoulder. Dr. Kipnis requested authorization for a right shoulder arthroscopy with debridement, subacromial decompression, and revision rotator cuff repair.

In a March 4, 2015 report, Dr. Jonathan B. Ticker, a specialist in orthopedic surgery, concurred with Dr. Kipnis' recommendation for an additional right rotator cuff procedure, although he noted that he needed to review the most recent MRI scan results. He advised that appellant rated the severity of his pain as an 8 on a scale of 1 to 10.

In a March 31, 2015 report, Dr. Kipnis advised that appellant had a preoperative evaluation for arthroscopic right shoulder surgery and was advised regarding the possible limited benefits of arthroscopy with concurrent arthritis.

In an April 10, 2015 report, Dr. Hormozan Aprin, Board-certified in orthopedic surgery, noted that appellant underwent a repeat MRI scan of the right shoulder and that Drs. Kipnis and Ticker had recommended a repeat surgery. He noted that appellant was currently experiencing

disabling residuals related to his right shoulder, as his accepted condition had not resolved and he needed further treatment. Dr. Aprin advised that appellant was partially disabled due to the right shoulder condition and could return to part-time, sedentary work for four hours per day with restrictions.

By decision dated April 22, 2015, OWCP denied appellant's request for reconsideration as it neither raised substantive legal questions, nor included new and relevant evidence sufficient to require OWCP to review its prior decision. It noted that there was no basis for further review of the December 19, 2014 decision given that he had not clarified the factual circumstances of his alleged September 29, 2014 recurrence of disability.³

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.⁴ 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.⁵

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has he advanced a relevant legal argument not previously considered by OWCP. Appellant submitted records he claimed were relevant and pertinent new evidence, including the December 31, 2014, January 19 and March 31, 2015 reports from Dr. Kipnis; the January 9, 2015 report from Dr. Henry; the March 4, 2015 report from Dr. Ticker; and the April 10, 2015 report from Dr. Aprin. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁶ This evidence appellant submitted in connection with his February 11, 2015 reconsideration request is not relevant or pertinent to the issue on appeal; *i.e.*, whether he sustained a recurrence of disability as of September 29, 2014 caused or aggravated by his accepted July 31, 2013 employment injury. The reports appellant submitted provided findings on examination and generally indicated that he was experiencing right shoulder pain attributable to the July 31, 2013 employment injury. However, they do not present

³ OWCP noted that appellant filed a Form CA-7 for the period October 6 through December 12, 2014, claiming intermittent wage loss, with attached CA-7a forms showing four hours of work and four hours of compensation claimed for October 6, 7, 8, and 9, 2014 and continuing. It noted that this claim and additional claims for intermittent wage loss had been processed for payment. OWCP further found that the assertion by appellant's counsel that the December 19, 2014 decision warranted reconsideration on the additional basis that he sustained a recurrence of disability beginning October 6, 2014 was not correct; it noted that no decision with appeal rights regarding a recurrence of disability commencing October 6, 2014 had been issued, nor had a claim for recurrence of disability as of that date been filed on forms prescribed by OWCP.

⁴ 20 C.F.R. § 10.606(b)(3); *see generally* 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

⁶ *See David J. McDonald*, 50 ECAB 185 (1998).

an opinion as to whether appellant sustained any disability as of September 29, 2014.⁷ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, and failed to advance a point of law or fact not previously considered by OWCP,⁸ nor did he present relevant and pertinent new evidence. The Board therefore finds that OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its April 22, 2015 decision.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's claim for reconsideration on the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ See *Patricia G. Aiken*, 57 ECAB 441 (2006).

⁸ The Board notes that appellant's attorney reiterated his argument below that appellant sustained a recurrence of disability beginning October 6, 2014, and that the medical evidence of record established that the recurrence of his total disability starting October 6, 2014 was sustained as a result of injuries and conditions causally related to the July 31, 2013 work injury. The Board finds that this argument has no merit as the record demonstrates that the claim for recurrence of disability was dated October 22, 2014 and it was for September 29, 2014.