

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**K.P., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Gary, IN, Employer** )

**Docket No. 16-0236**  
**Issued: February 25, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 20, 2015 appellant filed a timely appeal from an August 10, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from April 23, 2015 the date of the most recent OWCP merit decision to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration without a merit review pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On November 11, 2014 appellant, then a 32-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1), alleging a left shoulder strain in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

She claimed that on November 5, 2014 she experienced left shoulder pain while sweeping mail into trays and placing trays on racks. Appellant stopped work on November 6, 2014.

A November 5, 2014 hospital report diagnosed left shoulder strain.

In a November 11, 2014 statement, appellant advised that she felt sharp pain in her left shoulder that traveled to her neck as she was pulling full trays and putting them on top of racks. She noted that her partner saw that she was in pain and called for a supervisor.

By letter dated November 24, 2014, OWCP informed appellant of the type of evidence needed to establish her claim. It advised that she had 30 days to submit responsive evidence.

In a December 3, 2014 report, Dr. Nathaniel Ross, Board-certified in family medicine, advised that appellant had been experiencing left shoulder pain since November 5, 2014. He noted that the apparent precipitating event was lifting, but the actual mechanism of injury was unknown. Dr. Ross explained that appellant was lifting heavy trays overhead when she felt pain. On examination he noted no evidence of acute injury, normal palpation, 1/5 external rotators muscle strength, limited active range of motion, and full passive range of motion. Dr. Ross opined that appellant's pain was likely a rotator cuff injury that occurred in the workplace from sudden load bearing. He noted that appellant was off work until she completed physical therapy.

In a November 14, 2014 duty status report (Form CA-17), Dr. Ross assessed left shoulder pain. He advised that appellant was unable to work and her next appointment was scheduled for January 7, 2014.

By letter dated December 24, 2014, the employing establishment controverted appellant's claim because appellant's diagnosis of "pain" was not compensable.

On December 30, 2014 Dr. Ross referred appellant to another physician for management of left shoulder pain.

By decision dated January 5, 2015, OWCP denied appellant's claim because the medical evidence did not contain a diagnosis in connection with the injury.

On January 23, 2015 appellant requested reconsideration. In an accompanying statement, she advised that she was now submitting a diagnostic report and a medical report from her doctor establishing causal relationship.

In a January 23, 2015 report, Dr. Ross assessed rotator cuff tendinitis likely due to repetitive lifting at work and referred appellant for physical therapy. Magnetic resonance imaging (MRI) scan of the left shoulder revealed mild osteoarthritic changes of the left shoulder and left acromioclavicular joint with minimal joint effusion, mild tendinosis of the supraspinatus, and no evidence of rotator cuff tear.

By letter dated February 5, 2015, OWCP forwarded a statement of accepted facts and several questions to Dr. Ross regarding the cause and status of appellant's condition.

In a February 18, 2015 report, Dr. Ross reiterated the history of the injury as provided by appellant. He advised that her pain began two months earlier and that the apparent precipitating event was lifting at work, but the actual mechanism of injury was unknown. Dr. Ross noted that a left shoulder MRI scan revealed changes consistent with resolving traumatic bursitis and rotator cuff tendinosis. He opined that the November 5, 2014 work incident contributed to her left shoulder pain, as the findings suggested trauma. Dr. Ross further opined that appellant was not medically capable of performing her duties as a mail clerk and that she was expected to return in four to six weeks with physical therapy. An accompanying February 18, 2015 work capacity evaluation advised that appellant was unable to perform her usual job and that she needed physical therapy for four to six weeks to avoid reagravation.

By decision dated April 23, 2015, OWCP found that evidence was insufficient to establish that the diagnosed condition was causally related to the work incident.

On May 26, 2015 appellant requested reconsideration. In support of her request, she submitted a May 13, 2015 report from Dr. Ross who reiterated the history as provided by appellant and noted that the pain initially started two months earlier. Dr. Ross noted that a left shoulder MRI scan revealed changes consistent with resolving traumatic bursitis and rotator cuff tendinosis. He noted that the November 5, 2014 work event contributed to her left shoulder pain and noted that findings suggested trauma in addition to her injuries from chronic overuse. Dr. Ross opined that appellant was not capable of performing her duties as a mail clerk and was expected to return in four to six weeks with physical therapy.

By decision dated August 10, 2015, OWCP denied appellant's request for reconsideration without a merit review.

On appeal, appellant contended that her injury was directly caused by her work. She also noted that her doctor expressed to her that her work caused the injury. However, Dr. Ross did not know the wording needed as he was not experienced in workers' compensation cases. Appellant contended that many people at her job have had shoulder injuries and noted that she does not do other strenuous work outside of her job.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> its 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.<sup>3</sup> To be entitled to a merit review of its decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3).

<sup>4</sup> *Id.* at § 10.607(a).

OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### ANALYSIS

In an April 23, 2015 merit decision, OWCP denied appellant's claim because evidence did not establish that the work incident was causally related to the diagnosed condition. Appellant submitted a timely request for reconsideration received by OWCP, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. The underlying issue in this case is whether appellant established that the November 5, 2014 work incident caused or contributed to a diagnosed medical condition. This is a medical issue. OWCP's April 23, 2015 decision informed appellant that the medical evidence was insufficient to establish that her claimed condition was caused by the alleged work incident. In support of reconsideration, appellant submitted a May 13, 2015 report from Dr. Ross. However, this report does not constitute relevant and pertinent new evidence. Dr. Ross' May 13, 2015 report is virtually identical to his February 18, 2015 report previously submitted to OWCP. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>6</sup>

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

On appeal, appellant argued the merits of her claim. The Board only has jurisdiction over the August 10, 2015 nonmerit decision which denied his request for reconsideration. As explained, the Board does not have jurisdiction over the merits of the claim.

### CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits.

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<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *J.P.*, 58 ECAB 289 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2016  
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