



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The pertinent facts are set forth below. On October 26, 2009 appellant, then a 44-year-old part-time, flexible city carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced right shoulder pain and tingling in her right arm. She explained that she noticed in September that her right arm would be painful after work. Appellant did not stop work. OWCP accepted her claim for right shoulder pain, partial tear of the right shoulder with tendinosis, right rotator cuff impingement, and internal derangement of the right acromioclavicular (AC) joint.

On January 25, 2010 appellant stopped work and filed a claim for compensation beginning January 25, 2010. OWCP paid disability compensation until June 16, 2010 when she accepted a modified job offer as a part-time, flexible carrier. Appellant continued to receive medical treatment and intermittent disability compensation for medical appointments.

On December 6, 2010 appellant underwent authorized right shoulder arthroscopic subacromial decompression surgery. She stopped work and received disability compensation. On September 2, 2011 appellant returned to light duty. She again stopped work on October 23, 2011, when the employing establishment could no longer accommodate her work restrictions, and was placed on the periodic rolls. On January 17, 2012 appellant returned to light-duty work, but continued to receive medical and intermittent disability compensation benefits.

On February 27, 2012 OWCP expanded the accepted condition to include right shoulder superior lateral tear from anterior to posterior (SLAP) tear and adhesive capsulitis. Appellant stopped work again on February 28, 2012 when she underwent another right shoulder surgery and was placed back on the periodic rolls. On September 4, 2012 she returned to full-time light duty.

By decision dated April 12, 2013, OWCP granted appellant a schedule award for 15 percent permanent impairment of the right upper extremity.

On June 2, 2014 appellant underwent a third right shoulder surgery, stopped work, and was paid disability compensation. On February 17, 2015 she was returned to the periodic rolls.

On April 27, 2015 appellant returned to full-time light duty. She stopped work again on May 21, 2015 and received disability compensation benefits. Appellant continued to receive medical treatment.

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<sup>3</sup> This case was previously before the Board in Docket No. 12-1274 (issued December 3, 2012). The Board affirmed in part and set aside in part the May 7, 2012 decision of OWCP. The Board found that appellant had received an overpayment of compensation in the amount of \$4,757.39 because she continued to receive total disability compensation benefits even though she had returned to limited duty on September 2, 2011, but it also determined that she was not at fault with regard to the first compensation payment *via* direct deposit that she received after her return to work. The Board remanded the case for OWCP to determine whether she was entitled to waiver of recovery of the overpayment. The Board also found that appellant had abandoned her request for a prereducement hearing. The facts and circumstances of the case, as set forth in the Board's prior decision, are incorporated herein by reference.

On July 13, 2015 appellant underwent a magnetic resonance imaging (MRI) scan examination of her right shoulder by Dr. Eric Fitzcharles, a Board-certified diagnostic radiologist. He related that appellant experienced pain and limited range of motion following a 2009 work injury. Dr. Fitzcharles reported a partial tear in the distal subscapularis tendon, possibly with a slender contact of the deep margin of the tendon, a cyst in the anterior infraspinatus musculotendinous junction and in the posterior supraspinatus musculotendinous junction, and slight interstitial partial tearing in the supraspinatus tendon insertion. He also noted acromioplasty changes, mild-to-moderate AC joint arthrosis, mild subacromial bursitis, and rotator cuff tendinosis.

In a July 21, 2015 report, Dr. Ankur Chhadia, a Board-certified orthopedic surgeon, related appellant's complaints of pain, swelling, knotting, and tightness in her neck and right shoulder area and some numbness and tingling in her right arm. He reviewed her most recent MRI scan, which found bursitis, but no rotator cuff tear. Upon examination of appellant's right shoulder, Dr. Chhadia observed no effusion, swelling, or atrophy. He provided range of motion findings and reported no tenderness on impingement or rotator cuff. Neurovascular examination also revealed 5/5 strength and 2+ distal pulses. Upon examination of appellant's neck, Dr. Chhadia observed no tenderness on palpation and full range of motion with no pain. He diagnosed right shoulder bursitis and tendinitis. In a work-duty status, Dr. Chhadia reported that appellant could work light duty beginning July 28, 2015 with restrictions of no lifting more than 30 pounds.

On July 28, 2015 appellant returned to light duty. A telephone memorandum of record related that she informed OWCP that her physician took her off work from time to time due to swelling and inflammation in her right shoulder.

Dr. Chhadia continued to treat appellant. In an August 3, 2015 note, he noted that she was seen in his office that day and he opined that she should be off work due to swelling of her right shoulder, bursitis, and tendinitis.

In an August 4, 2015 medical report, Dr. Chhadia related that he had examined appellant for complaints of pain, swelling, tightness, and stiffness in her shoulder and neck area. He noted a history of an unspecified rotator cuff tear or rupture of the right shoulder. Dr. Chhadia reported that appellant performed extensive repetitive work and observed pain in her shoulder over time. Upon examination, he observed no effusion, swelling, or atrophy of the right shoulder and no AC joint tenderness on palpation. Dr. Chhadia reported range of motion findings of forward flexion to 100 degrees, external rotation to 10 degrees, and internal rotation to the lower thoracic spine. Neer and Hawkin's impingement signs were positive. Dr. Chhadia further observed no tenderness of the right shoulder rotator cuff. He indicated that the right shoulder MRI scan revealed bursitis with no rotator cuff tear. Dr. Chhadia diagnosed shoulder bursitis and tendinitis. He related that appellant requested a work note for August 1 to 4, 2015 due to worsening pain levels to her right shoulder. Dr. Chhadia reported that appellant could continue to work light duty. He provided a work-duty status note, which indicated that appellant was on permanent light-duty restrictions of occasional lifting up to 25 pounds, occasional pushing, pulling, and carrying up to 30 pounds, and working above the shoulder with her right arm for up to one hour.

On August 27, 2015 OWCP received appellant's compensation claim for intermittent periods of disability (Form CA-7) from August 1 to 10, 2015 for a total of 32 hours. On the time analysis form, appellant indicated that on August 1, 3, 4, and 10, 2015 the physician took her off work because of a swollen shoulder.

In narrative reports dated August 31 to October 20, 2015, Dr. Chhadia related appellant's complaints of pain, swelling, stiffness, and tightness in her right shoulder. He noted that he examined her on August 4, 2015 and recounted that she had been feeling worse since her last visit with severe aches and pain. Dr. Chhadia reviewed appellant's history and noted that she had undergone three surgeries for the right shoulder. Upon examination of her right shoulder, he observed no swelling, effusion, or atrophy. Dr. Chhadia also noted no tenderness of the AC joint and no tenderness of the right rotator cuff. Subscapularis strength and infraspinatus strength were 5/5. Dr. Chhadia provided range of motion findings and diagnosed right shoulder bursitis and tendinitis. In an October 20, 2015 report, he opined that appellant had 12 percent permanent impairment of the right upper extremity. In work status notes, Dr. Chhadia indicated that she was on permanent light duty of lifting up to 25 pounds and pushing, pulling, and carrying up to 30 pounds.

On October 22, 2015 Dr. Chhadia examined appellant and provided a work-duty status note. He noted that she could perform the duties of her current route with permanent restrictions of occasional lifting up to 20 pounds, occasional pushing/pulling and carrying up to 30 pounds, and working above the right shoulder for one hour. Dr. Chhadia explained that "the repetition of [appellant's] job periodically aggravates her condition which causes swelling, inflammation, and tenderness." He noted that this was the reason appellant was out periodically from work to rest the shoulder.

In a letter dated September 8, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish total disability for the intermittent periods claimed. It requested additional medical evidence to establish that she was unable to work on the dates claimed as a result of her employment injury.

By e-mails dated September 29 to 30, 2015, OWCP inquired from Jessie Tucker, a human resource specialist for the employing establishment, if appellant's limited-duty job was still available. Mr. Tucker informed OWCP that the limited-duty position was still available. He also noted that appellant had been taking off and on from work from August 13 to September 28, 2015. Mr. Tucker explained that this was a pattern for her to be absent without leave for some days and then return to work for a day or two.

In a decision dated November 6, 2015, OWCP denied appellant's claim for disability compensation for the period August 1 to 10, 2015. It found that the medical evidence failed to establish total disability on the claimed dates due to her employment injury.

On November 11, 2015 OWCP received appellant's handwritten statement requesting reconsideration. Appellant noted that August 4 and 18, 2015 were the physician's appointments and that on the other days Dr. Chhadia had her off work due to swelling of her right shoulder.

Appellant resubmitted Dr. Chhadia's October 20, 2015 impairment evaluation report.

By decision dated November 18, 2015, OWCP denied appellant's November 11, 2015 reconsideration request. It found that the evidence submitted in support of reconsideration was insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>4</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability for his or her particular work.<sup>5</sup> For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>6</sup>

When the employee who is disabled from the job she held when injured on account of employment-related residuals returns to a light-duty position or the medical evidence establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the evidence that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>7</sup>

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.<sup>8</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition. OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.<sup>9</sup>

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<sup>4</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>5</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>6</sup> *Amelia S. Jefferson*, *supra* note 4.

<sup>7</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> 5 U.S.C. § 8103(a).

<sup>9</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

## ANALYSIS -- ISSUE 1

On May 6, 2010 OWCP accepted that appellant sustained several right shoulder conditions, including partial tear of the right shoulder with tendinosis, right rotator cuff impingement, internal derangement of the right AC joint, right shoulder SLAP tear, and adhesive capsulitis, as a result of her employment as a mail carrier. She worked modified duty beginning June 16, 2010. Appellant underwent three surgeries to her right shoulder. She was on and off work due to recovery from surgery and withdrawal of her light-duty assignment.

On August 27, 2015 OWCP received appellant's claim for intermittent periods of disability from August 1 to 10, 2015 for a total of 32 hours. Appellant indicated that on August 1, 3, 4, and 10, 2015 the physician took her off work because of a swollen shoulder.

The medical evidence relevant to appellant's claimed dates of disability include various reports by Dr. Chhadia. In an August 3, 2015 note, he indicated that she needed to be off work due to swelling of her right shoulder, bursitis, and tendinitis. Although Dr. Chhadia opined that appellant was unable to work due to her right shoulder condition, the Board finds that he did not provide any objective examination findings or explanation for why she could no longer work in her modified-duty position. The Board has held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>10</sup> Dr. Chhadia did not provide any medical rationale or objective evidence that explained why appellant was no longer able to work modified duty on August 3, 2015 as a result of her employment injury.

In an August 4, 2015 report, Dr. Chhadia related appellant's complaints of pain, swelling, tightness, and stiffness in her right shoulder and neck. He reviewed her history and noted that she did a lot of repetitive work. Upon examination, Dr. Chhadia observed no effusion, swelling, or atrophy of the right shoulder and no AC joint tenderness on palpation. He provided range of motion findings and noted that Neer and Hawkins' impingement signs were positive. Dr. Chhadia reported that the right shoulder MRI scan revealed bursitis with no rotator cuff tear. He diagnosed shoulder bursitis and tendinitis and opined that appellant could continue to work light duty. Dr. Chhadia related that appellant requested a work note for August 1 to 4, 2015, but he found that she was able to continue to work light duty.

The Board has held that when a physician's statement regarding an employee's ability to work consists only of repetition of the employee's complaints that he or she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.<sup>11</sup> In this case, Dr. Chhadia merely reiterated appellant's complaints that she was unable to work due to worsening right shoulder pain, but opined that she could continue to work light duty. The Board finds that as Dr. Chhadia did not provide any physical examination findings to support that appellant was totally disabled from work on the claimed dates due to her right shoulder condition, his report is insufficient to establish her intermittent disability claim.

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<sup>10</sup> *P.D.*, Docket No. 14-744 (issued August 6, 2014); *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

<sup>11</sup> *P.D.*, *id.*; *G.T.*, 59 ECAB 447 (2008).

In an October 22, 2015 work status note, Dr. Chhadia again examined appellant and opined that she could perform the duties of her current route with permanent restrictions. He reported that the repetitive nature of her job periodically aggravated her condition, causing swelling, inflammation, and tenderness. Dr. Chhadia explained that this was the reason appellant was out periodically from work in order to rest the shoulder. The Board notes that even though Dr. Chhadia opined that appellant would periodically be out of work due to her right shoulder condition, he did not cite to objective examination findings of disability nor provide specific dates for when she was unable to work light duty due to her accepted right shoulder condition. Accordingly, the Board finds that Dr. Chhadia's opinion lacks both medical rationale and particularity for the claimed dates of disability.<sup>12</sup> Because Dr. Chhadia failed to provide a rationalized medical opinion explaining how appellant was unable to work modified duty for intermittent periods from August 1 to 10, 2015 his reports are of diminished probative value.

On appeal, appellant alleges that her physician's statements should be sufficient to establish disability for the period since her physician reported that there would be periodic times when she will be off work due to swollen shoulder. As previously noted, self-certification of disability is not sufficient<sup>13</sup> and the medical reports she submitted failed to establish the claimed periods of intermittent disability from August 1 to 10, 2015. Because appellant did not submit medical reports providing rationalized medical opinion explaining why she was unable to work light duty on the specific dates of disability, the Board finds that OWCP properly denied her claim for intermittent periods of disability for the period August 1 to 10, 2015.

The Board finds, however, that the case is not in posture for decision regarding whether appellant is entitled to compensation on August 3 and 4, 2015 for medical treatment. OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.<sup>14</sup> It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>15</sup> As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>16</sup>

The record contains medical evidence that establishes that appellant received medical treatment on August 3 and 4, 2015 from Dr. Chhadia. If appellant were receiving medical treatment for her accepted right shoulder condition on these dates, the Board finds that she could be paid wage-loss compensation up to four hours for obtaining medical services and for a

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<sup>12</sup> See *V.C.*, Docket No. 14-1230 (issued December 29, 2014).

<sup>13</sup> *Supra* note 6.

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

<sup>15</sup> *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

<sup>16</sup> *Supra* note 14 at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

reasonable time spent traveling to and from the medical provider's location. The case will be remanded for OWCP to determine whether she is entitled to up to four hours of wage-loss compensation for both dates of these medical appointments and travel time.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.<sup>17</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>18</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>19</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>20</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, she has not advanced a relevant legal argument not previously considered by OWCP, and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated November 6, 2015, OWCP denied appellant's claim finding that the evidence failed to establish that she was unable to work modified duty for intermittent periods from August 1 to 10, 2015. In a narrative statement received by OWCP on November 11, 2015, she requested reconsideration. Appellant submitted an October 20, 2015 report by Dr. Chhadia that OWCP had previously considered. This report, however, is insufficient to warrant further merit review as the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>22</sup>

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<sup>17</sup> 5 U.S.C. § 8128(a).

<sup>18</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>19</sup> *Id.* at § 10.607(a).

<sup>20</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>21</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>22</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

As appellant also failed to submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or that advances a relevant legal argument not previously considered by OWCP, she did not meet the necessary requirements, for a further merit review.<sup>23</sup>

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for intermittent disability from August 1 to 10, 2015 but that this case is not in posture for a decision as to whether she is entitled to wage-loss benefits for the August 4 and 5, 2015 medical appointments. On remand OWCP shall issue a *de novo* decision on this issue. The Board also finds that OWCP properly denied further merit review of appellant's claim.

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<sup>23</sup> *L.H.*, 59 ECAB 253 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part and the November 18, 2015 decision is affirmed.

Issued: June 27, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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