

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 14, 2013 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained rotator cuff syndrome in the performance of duty. He attributed his condition to repetitive motions at work. Appellant noted that he first became aware of his condition on January 8, 2008 and its relation to his federal employment on November 6, 2013. He did not stop work.

In a statement received on November 26, 2013, appellant advised that he worked 48 to 50 hours per week at the employing establishment. He noted that his duties included casing mail, lifting heavy buckets of mail weighing up to 30 pounds, carrying a satchel weighing up to 35 pounds, bending, twisting, and stretching.

In a November 13, 2013 statement, Dr. Daniel Aaron, a Board-certified orthopedic surgeon, advised that appellant complained of right shoulder pain. He noted that appellant experienced symptoms for years, but his condition progressively worsened over time. Examination of the right shoulder revealed positive impingement signs, no tenderness, and no pain with range of motion. Dr. Aaron advised that a right shoulder x-ray revealed no acute bony abnormality, no degenerative joint disease, and a centered humeral head.

By letter dated January 16, 2014, OWCP advised appellant of the type of evidence needed to establish his claim. He was informed that he had 30 days to submit responsive evidence.

In a report received on February 13, 2014, Dr. Aaron advised that appellant was experiencing worsening right shoulder pain for years. He noted that appellant's examination was consistent with rotator cuff syndrome, which could include impingement, tendinitis, bursitis, and sometimes partial thickness or small full thickness tears of the rotator cuff tendon. Dr. Aaron advised that appellant's condition typically developed with age and repetitive stress. He explained that appellant worked as a letter carrier where he was required to lift heavy loads consistently and opined that rotator cuff syndrome could certainly develop in that context and be aggravated by continued heavy lifting.

By decision dated February 20, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish that the diagnosed condition was causally related to factors of his employment.

By letter dated April 14, 2014, appellant requested to change his attending physician.

In an October 14, 2014 letter, received on October 20, 2014, appellant requested reconsideration.

In an October 2, 2014 report, Dr. Aaron advised that appellant was experiencing right shoulder pain that had been present for years. He noted that examination of the right shoulder

was consistent with rotator cuff syndrome which could include impingement, tendinitis, bursitis, and sometimes partial thickness or small full thickness tears of the rotator cuff tendon. Dr. Aaron noted that in his most recent September 3, 2014 evaluation appellant reported improvement in pain after his acromioclavicular joint injection, but related that his pain had since returned. He opined that arthritis of the acromioclavicular joint and rotator cuff syndrome are conditions that develop with age, as well as repetitive stress or wear and tear. Dr. Aaron further opined that appellant's condition was caused by repetitive mail sorting, mail delivery, repetitive reaching with his right shoulder, opening and closing doors, lifting heavy loads, and carrying a heavy bag on his shoulder consistently.

By decision dated October 30, 2014, 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,⁴ 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.⁵ 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.⁶ 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.⁷

ANALYSIS

In a February 20, 2014 decision, OWCP denied appellant's claim because the medical evidence did not establish that the diagnosed conditions were causally related to factors of his employment. Appellant submitted a timely request for reconsideration received by OWCP on October 20, 2014 which OWCP denied without conducting 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 factors of his federal employment caused or contributed to a diagnosed medical condition. This is a medical issue. OWCP's October 30, 2014 decision informed appellant that the medical evidence was insufficient to establish that his claimed condition was caused by factors of his employment. In support of his request for reconsideration, appellant submitted an October 2, 2014 report by Dr. Aaron. However, this report does not constitute relevant and pertinent new evidence. In this report Dr. Aaron noted that arthritis of the acromioclavicular joint and rotator

⁴ *Supra* note 2. 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).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

cuff syndrome are conditions that develop with age, as well as repetitive stress or wear and tear. He opined that appellant's condition was caused by repetitive mail sorting, mail delivery, repetitive reaching with his right shoulder, opening and closing doors, lifting heavy loads, and carrying a heavy bag on his shoulder. This report, however, repeats the content of his report received on February 19, 2014, which also attributed his condition to heavy lifting and characterized his condition as one that typically developed with age and repetitive stress. 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.

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 he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen his claim for further review of the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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