



## **FACTUAL HISTORY**

On May 22, 2012 appellant, then a 46-year-old mail handler, filed an occupational disease claim (Form CA-2), alleging that she developed tendinosis of the supraspinatus tendon due to her federal duties. She indicated that she first became aware of her condition and attributed it to her federal employment on June 11, 2011. OWCP initially accepted the claim for left shoulder disorder of bursae and tendons, and authorized left shoulder arthroscopic subacromial decompression performed by Dr. Daniel P. Mass, a Board-certified orthopedic surgeon, on August 3, 2012. It also accepted acromioclavicular (AC) arthropathy of the left shoulder and recurrences of disability beginning October 25, 2011 and October 26, 2013, and expanded the claim to include left shoulder AC arthropathy. Appellant returned to part-time, limited-duty work on November 27, 2013. On March 3, 2014 she underwent a left shoulder arthroscopic capsular release and arthroscopic subacromial decompression, which was also performed by Dr. Mass. On December 20, 2014 appellant returned to work in a full-time, limited-duty capacity.

Appellant stopped work on February 11, 2015, and later filed several claims for compensation (Form CA-7) for temporary total disability beginning February 11, 2015. She submitted February 12 and 26, 2015 work excuses, and a March 4, 2015 report from Dr. Mass who diagnosed left shoulder adhesive capsulitis and advised that she was disabled for work because her right shoulder was aggravated by nonuse of the left shoulder after surgery.

By decision dated April 8, 2015, OWCP denied appellant's claimed recurrence of disability beginning February 11, 2015 because the medical evidence of record failed to establish that her accepted condition(s) materially changed/worsened to the point that she was unable to work at all.

OWCP subsequently paid appellant wage-loss compensation beginning April 18, 2015 because the employing establishment was unable to accommodate her work restrictions. It placed her on the periodic compensation rolls effective May 31, 2015.

On January 27, 2016 appellant requested reconsideration of the April 8, 2015 decision and argued that the medical evidence of record and her request for surgery established her disability for the period claimed. *i.e.*, commencing February 11, 2015. She further indicated that she had not been back to work since February 11, 2015 and her condition remained the same.

By decision dated August 2, 2016, OWCP denied modification of its April 8, 2015 decision denying appellant's claim for disability compensation for the period February 11 to April 17, 2015. It found that the medical evidence of record failed to establish that she was totally disabled for the period claimed.

On October 20, 2016 appellant requested reconsideration for a second time. She submitted reports dated September 7 and December 7, 2016, and March 9, 2017 from

Dr. Salman A. Chaudri, an orthopedic surgeon, who indicated that she was injured on June 11, 2011 and continued to be totally disabled for work due to her pain.<sup>3</sup>

Appellant also submitted an October 13, 2016 report from Dr. Mass who indicated that appellant was seen for work-related pain in both shoulders during the time period February 11 to March 4, 2015. Dr. Mass reported that she had been examined during this period and he found that her level of pain, as well as her range of motion, might require surgery, which she did not want and OWCP wanted more specific reasoning as to why she was unable to work at that time. He opined that appellant was unable to work during the period claimed because of her secondary pain and decreased range of motion, which precluded work.

By decision dated March 30, 2017, OWCP denied appellant's request for reconsideration without a merit review because she failed to advance a relevant legal argument or submit any relevant and pertinent new evidence.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>6</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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>7</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

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<sup>3</sup> In April 2015, OWCP recognized Dr. Chaudri as appellant's current treating physician. Dr. Chaudri first examined appellant on April 20, 2015.

<sup>4</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> 20 C.F.R. § 10.606(b)(3).

<sup>8</sup> *Id.* § 10.608(a), (b).

### ANALYSIS

In support of her October 20, 2016 reconsideration request, appellant submitted a new medical report dated October 13, 2016 from Dr. Mass who indicated that appellant was seen for work-related pain in both shoulders from February 11 to March 4, 2015. Dr. Mass reported that appellant had been examined during this period and he found that her level of pain, as well as her range of motion, might require surgery. He opined that she was unable to work during the period claimed because of her secondary pain and decreased range of motion. Dr. Mass' opinion directly addressed the basis upon which OWCP denied appellant's claim as it addressed the issue of causal relationship between her condition and her claim for disability compensation for the period February 11 to April 17, 2015. For these reasons, the Board finds that his October 13, 2016 report constituted relevant and pertinent new evidence not previously considered by OWCP. As it meets one of the standards for obtaining a merit review of appellant's case, the Board finds that OWCP improperly denied appellant's request. Appellant is entitled to a merit review.

The Board has held that, in support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof. He or she need only submit relevant and pertinent evidence not previously considered by OWCP.<sup>9</sup> Therefore, the Board will reverse OWCP's March 30, 2017 decision denying appellant's request for reconsideration and will remand the case for a merit review. After such further development of the evidence as might be necessary, OWCP shall issue an appropriate decision.

### CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>9</sup> See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded to OWCP for further action consistent with this decision.

Issued: August 3, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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