

FACTUAL HISTORY

OWCP accepted that on May 7, 2013 appellant, then a 52-year-old lead transportation security officer, sustained an unspecified traumatic right shoulder injury while lifting heavy suitcases from a conveyor belt. Appellant was followed by Dr. James D. Cash, an attending Board-certified orthopedic surgeon. On August 2, 2013 Dr. Cash diagnosed a torn right rotator cuff due to lifting heavy bags at work. Imaging studies revealed supraspinatus and infraspinatus tendon tears in the right shoulder.²

As physical therapy and conservative measures failed to relieve appellant's symptoms, Dr. Cash performed an arthroscopic subacromial decompression, labral debridement, and distal clavicle resection on October 2, 2013, authorized by OWCP. Appellant returned to work for four hours a day on October 15, 2013. Dr. Cash submitted periodic progress notes through January 3, 2014. He continued to restrict appellant to limited duty. Appellant received compensation to attend physical therapy visits from January 3 to February 7, 2014. Dr. Cash released appellant to full duty with no restrictions as of February 20, 2014. He opined that appellant had attained maximum medical improvement. Appellant continued to participate in physical therapy from August 2013 to January 2014. She returned to full duty on or about May 2014.

On February 3, 2016 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing that day. She asserted that she never fully recovered from the accepted May 7, 2013 right shoulder injury. Appellant contended that her assigned duties on and after May 8, 2013 caused a severe exacerbation of shoulder, neck, and back pain. She stopped work on February 3, 2016. Appellant claimed compensation through February 10, 2016.

In a March 1, 2016 letter, OWCP advised appellant of the additional evidence needed to establish her claim for recurrence of disability, including a statement from her attending physician explaining how and why the accepted right shoulder injury had spontaneously worsened such that appellant was disabled for work as of February 3, 2016. It afforded her 30 days to submit such evidence.

In response, appellant submitted her March 9, 2016 statement, explaining that repetitive lifting at work caused repetitive strain injuries to her back, neck, shoulders, and arms. She asserted that she continued to work in extreme discomfort until an attending physician held her off work. Appellant provided a list of medications and a November 12, 2015 electrodiagnostic study report demonstrating right ulnar nerve entrapment at the elbow.

By decision dated April 13, 2016, OWCP denied appellant's claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted May 7, 2013 right shoulder injury and appellant's condition on and after February 3, 2016.

On May 9, 2016 appellant requested reconsideration by checking a box on an appeal request form. She did not submit additional evidence or argument.

² On September 30, 2013 appellant consulted Dr. David W. Griffiths, a family practitioner, who recommended surgery to address the right rotator cuff and supraspinatus issues.

By nonmerit decision dated May 17, 2016, OWCP denied appellant's request for reconsideration, finding that it did not raise substantive legal questions or include relevant and pertinent new evidence.

LEGAL PRECEDENT -- ISSUE 1

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."³

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained an unspecified right shoulder injury on May 7, 2013, necessitating arthroscopic subacromial decompression, labral debridement, and distal clavicle resection on October 2, 2013. Appellant performed modified duty from October 15, 2013 to approximately May 2014, when she returned to full duty after being released from care by Dr. Cash.

Appellant continued to perform full duty until she stopped work on February 3, 2016 and claimed a recurrence of disability. She contended that her duties after she returned to work caused repetitive strain injuries to her neck, back, both shoulders, and both arms. Appellant thus has the burden of proof to establish causal relationship between her accepted right shoulder condition and her February 3, 2016 recurrence of disability.⁵

The only medical evidence appellant submitted in support of her recurrence claim was a November 12, 2015 electrodiagnostic study demonstrating right ulnar nerve entrapment. This report does not contain medical rationale supporting causal relationship between the accepted right shoulder injury and her recurrence of disability. It is therefore insufficient to meet appellant's burden of proof.⁶ The Board notes that as appellant contended that new work duties after May 7, 2013 caused additional injuries, this implicates a new injury or condition rather than

³ 20 C.F.R. § 10.5(y); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.a (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

⁵ *Ricky S. Storms*, *id.*

⁶ *Id.*

a recurrence of disability. Additionally, exposure to new work factors constitutes an intervening cause, breaking the chain of causation from the May 7, 2013 injury.⁷

OWCP advised appellant by March 1, 2016 letter to submit rationalized medical evidence regarding whether the accepted right shoulder condition worsened as of February 3, 2016 as claimed. Appellant did not submit such evidence. Therefore, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that 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.⁹ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹¹ Appellant need only submit relevant and pertinent evidence not previously considered by OWCP.¹² When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹³

ANALYSIS -- ISSUE 2

Appellant claimed that she sustained a recurrence of disability commencing February 3, 2016. OWCP denied the claim by decision dated April 13, 2016, finding that appellant had not established causal relationship.

⁷ *Kenneth R. Love*, 50 ECAB 193 (1998).

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹¹ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹² *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹³ *Annette Louise*, 54 ECAB 783 (2003).

Appellant requested reconsideration on May 9, 2016. On May 17, 2016 OWCP denied her reconsideration request finding that it did not raise substantive legal questions or include relevant and pertinent new evidence.

The Board finds that OWCP properly denied reconsideration. The critical issue in the April 13, 2016 merit decision was that appellant had not established causal relationship between the accepted right shoulder injury and the claimed recurrence of disability. To be relevant, any evidence submitted on reconsideration must address that issue. Appellant's May 5, 2016 reconsideration request did not contain any evidence or argument. She therefore failed to present any relevant evidence on the underlying issue of causal relationship and has failed to provide a basis for reopening the case.¹⁴

As appellant has not met any of the criteria under 20 C.F.R. § 10.606(b)(3), OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing February 3, 2016, causally related to her accepted May 7, 2013 right shoulder injury. The Board further finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁴ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 17 and April 13, 2016 are affirmed.

Issued: February 9, 2017
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