

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a left shoulder injury causally related to the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 1, 2016 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a left shoulder injury due to his repetitive employment duties.³ He noted that he first became aware of his claimed condition on May 7, 2015 and of its relationship to his federal employment in December 2015. Appellant first received medical care on January 20, 2016. He notified his supervisor of the alleged injury on August 2, 2016.

In an accompanying narrative statement, appellant reported that, on February 11, 2015, he fell on ice while delivering mail, causing several injuries.⁴ He underwent right shoulder surgery in May 2015 and noticed intermittent pain in his left shoulder during his recovery. Appellant returned to work in December 2015 and began to experience more pain and stiffness in his left shoulder.

Appellant also reported a separate incident in March 2016 when his coworker slipped on the stairs at work, causing him to fall as well and overstretch his left shoulder and arm.⁵ He reported that his physician ordered a magnetic resonance imaging (MRI) scan of the left shoulder which revealed a full thickness rotator cuff tear and the need for surgery. Appellant did not stop work, but had continued pain and throbbing in his left shoulder and arm. He also noted that his employment duties entailed a lot of repetitive motions from lifting, pulling, reaching, and twisting. There was an increase in the amount of packages appellant had to deliver which required greater lifting, twisting, and reaching in a limited amount of space while driving his postal vehicle. He reported that the constant repetitive motion at his employment over the course of 20 years caused his left shoulder injury which entailed carrying his mailbag on his left shoulder and delivering packages from his vehicle.

In medical reports dated January 20 and February 26, 2016, Dr. John Mulroy, a Board-certified orthopedic surgeon, reported that appellant complained of left shoulder pain which had been gradual and present for the past six months. He noted a recent right shoulder rotator cuff

³ OWCP assigned the present claim File No. xxxxxx815.

⁴ The record reflects that appellant has a prior injury claim for a February 11, 2015 traumatic injury, assigned OWCP File No. xxxxxx784. OWCP accepted that claim for neck sprain, closed fracture of the dorsal vertebra, concussion, and persistent headache. Appellant also has a prior occupational disease claim, filed on December 1, 2014, which assigned File No. xxxxxx671. OWCP accepted that claim for right rotator cuff tear.

⁵ The Board also notes that on April 20, 2016, appellant filed a traumatic injury claim (Form CA-1) alleging injury to his left shoulder at work when he fell while ascending stairs in March 2016. OWCP assigned that claim File No. xxxxxx771. By decision dated June 16, 2016, it denied his claim for failing to establish fact of injury.

repair and intermittent left shoulder pain with activity. Dr. Mulroy reviewed x-rays of the left shoulder which revealed normal findings and diagnosed left subacromial bursitis of the left shoulder.

In a March 7, 2016 diagnostic report, Dr. Ashesh Patel, Board-certified in internal medicine, reported that an MRI scan of appellant's left shoulder revealed a full thickness tear of the rotator cuff.

In a March 15, 2016 medical report, Dr. Mulroy diagnosed a complete rotator cuff tear based on findings of the left shoulder MRI scan.

In a May 12, 2016 medical note, Dr. Seung Jae Lee, Board-certified in family medicine, reported that he diagnosed appellant with a full thickness tear of the left rotator cuff. He opined that there was a chance that appellant's injury at work in April 2016 could be the provoking or aggravating factor for his left shoulder condition. Dr. Lee further noted that appellant's left shoulder discomfort had been worse since that date.

By development letter dated September 23, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised him of the medical and factual evidence needed and afforded him 30 days to submit additional evidence. By separate letter of that same date, OWCP requested the employing establishment also provide additional information pertaining to appellant's occupational disease claim.

On September 23, 2016 the employing establishment's postmaster, responded to OWCP's development letter and discussed appellant's employment duties as a letter carrier. He reported that appellant's statement regarding his employment duties was accurate, explaining that appellant's job required a lot of repetitive motion from lifting, pulling, reaching, and twisting for delivery preparation. The postmaster further noted that appellant accurately reported that there had been an increase in parcel delivery over the past two years. Appellant's route averaged 37 large packages per day which required added lifting with regards to loading and unloading of the vehicle and conveyance to the delivery address. The postmaster explained that those packages required scanning with a hand held device, and other scans were also required on smaller packages ranging from 20 to 50 pieces per day. He reported that there was documentation of appellant falling on stairs inside of the employing establishment facility during the month of January, causing him to land on his left side. Appellant notified his supervisor that he had extended his arm to stop the fall, but refused medical attention. The postmaster noted that appellant had been in regular attendance and had been employed as a letter carrier for approximately 20 years. He submitted an official letter carrier position description.

By decision dated October 24, 2016, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the established factors of his federal employment.

In a narrative statement received on October 25, 2016, appellant explained that Dr. Mulroy diagnosed appellant's left rotator cuff tear months prior to his fall at work. He subsequently sought treatment with Dr. Lee, his primary care physician, who informed appellant that his condition was caused by 20 years of repetitive lifting and reaching for mail and heavy packages. Dr. Lee also

explained that appellant's fall at work aggravated his left shoulder condition further. Appellant reported that he did not engage in any other hobbies or activities which could have caused his injury and submitted photographs which illustrated the lifting, pulling, and reaching involved in his employment duties as a letter carrier.

On November 28, 2016 appellant, through counsel, requested reconsideration of OWCP's October 24, 2016 decision. Counsel noted appellant's prior right shoulder injury which was approved by OWCP for surgery on April 30, 2015. He argued that both shoulder injuries were caused by 20 years of repetitive reaching, lifting, pushing, and pulling hampers and packages.

On February 14, 2017 appellant again requested reconsideration. In support of his request, he submitted a January 31, 2017 note from Dr. Lee who reported that appellant suffered from left shoulder pain. Dr. Lee opined that rotator cuff tears do typically occur from repetitive overuse of the shoulder which was attributed by appellant's job function.

In a January 31, 2017 medical report, Dr. Eric Berkson, a Board-certified orthopedic surgeon, reported that appellant presented for evaluation of left shoulder pain which began one year prior. Appellant reported that, in December 2015, he was working as a letter carrier when he developed pain in his shoulder which progressed with activity. He sought treatment with Dr. Mulroy and Dr. Lee where cortisone injections were administered. A March 2016 MRI scan of the left shoulder revealed full thickness tear of the rotator cuff and surgery was recommended. Dr. Berkson also noted a history of right shoulder rotator cuff repair in 2015. He diagnosed left shoulder full thickness tear of the supraspinatus tendon, partial tearing of the subscapularis tendon, unstable biceps tendon with associated tendinitis, and acromioclavicular (AC) joint arthritis. Dr. Berkson noted that appellant inquired about the relationship of his injury to his employment duties. Appellant denied any pain prior to December 2015 and stated that he had the onset of pain during the course of his employment duties and believed that work was aggravating these findings. Dr. Berkson informed appellant that repetitive overuse injuries can often lead to these types of findings, but are difficult to substantiate one way or the other.

By decision dated June 1, 2017, OWCP denied modification of its October 24, 2016 decision, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed left shoulder condition was causally related to the established factors of federal employment.

On September 11, 2017 appellant, through counsel, requested reconsideration of OWCP's June 1, 2017 decision. Counsel noted submission of Dr. Lee's January 31, 2017 medical report in support of appellant's claim. No other evidence was received.

By decision dated September 21, 2017, OWCP denied appellant's September 11, 2017 request for reconsideration, finding that it neither raised substantive legal questions nor included relevant and pertinent new evidence. Rather, the submitted evidence was repetitious of that which was previously submitted and reviewed. The request was, therefore, insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not submitted sufficient medical evidence to establish that his left shoulder condition was causally related to the accepted factors of his federal employment as a letter carrier.¹²

⁶ *Supra* note 2.

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

In a May 12, 2016 medical note, Dr. Lee reported that appellant was diagnosed with a full thickness tear of the left rotator cuff. He opined that there was “a chance” that appellant’s injury at work in April 2016 could be the provoking or aggravating factor for his left shoulder condition. Dr. Lee further noted that appellant’s left shoulder discomfort had worsened since that date. The Board notes that Dr. Lee’s report fails to provide support for an occupational disease injury caused by appellant’s repetitive employment duties as a letter carrier over a period longer than a single workday or shift as alleged by appellant in this claim.¹³ Rather, the physician appears to be attributing appellant’s left shoulder rotator cuff tear to a traumatic injury produced by his work environment from a single occurrence within a single workday having occurred in April 2016.¹⁴ Dr. Lee’s January 31, 2017 note also fails to provide support for a work-related occupational injury. The physician’s opinion on causal relationship was speculative, noting that rotator cuff tears do typically occur from repetitive overuse of the shoulder, without a firm conclusion that appellant’s employment duties did in fact cause or aggravate his injury.¹⁵ To be of probative value, a physician’s opinion on causal relationship should be one of reasonable medical certainty.¹⁶ Dr. Lee failed to provide a fully detailed medical report as he made no mention of appellant’s medical history, findings on physical examination, review of diagnostic testing, or his repetitive employment duties. Given the deficiencies in his reports, his opinion on causal relationship is equivocal in nature and of limited probative value.¹⁷

In a January 31, 2017 medical report, Dr. Berkson reported that appellant presented for evaluation of left shoulder pain which began in December 2015 when working as a letter carrier. A March 2016 MRI scan of the left shoulder revealed full thickness tear of the rotator cuff and surgery was recommended. He diagnosed left shoulder full thickness tear of the supraspinatus tendon, partial tearing of the subscapularis tendon, unstable biceps tendon with associated tendinitis, and AC joint arthritis. The Board notes that, while Dr. Berkson provided various diagnoses related to appellant’s left shoulder condition, his report is not well rationalized and is therefore insufficient to establish appellant’s claim.

Dr. Berkson failed to provide a well-reasoned opinion on the cause of appellant’s injury and had no understanding of his federal employment duties to establish causation. His opinion on causation was couched in general and speculative terms, stating that repetitive overuse injuries can often lead to these types of findings, but are difficult to substantiate one way or the other. Dr. Berkson’s report lacks the specificity and detail as appellant’s actual repetitive employment duties to establish a work-related occupational exposure.¹⁸ As he failed to provide a rationalized

¹³ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁴ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee).

¹⁵ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

¹⁶ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁸ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

opinion that appellant's left shoulder injuries were caused by his repetitive employment duties as a letter carrier, his report is insufficient to meet appellant's burden of proof.¹⁹

The remaining medical evidence of record is also insufficient to establish appellant's occupational disease claim. Dr. Mulroy's medical reports dated January 20 to March 15, 2016 document treatment for left shoulder pain and a rotator cuff tear. While the reports reflect that appellant sought medical treatment for his left shoulder injury prior to his fall at work in March 2016, the physician failed to discuss appellant's employment duties and provided no opinion regarding the cause of his injury.²⁰ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.²¹

Dr. Patel's March 7, 2016 diagnostic report is also insufficient to establish appellant's claim as the physician interpreted imaging studies and provided no opinion on the cause of his injury.²²

Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment factors, physiologically, caused or aggravated his left shoulder injury.²³ The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.²⁴ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁵ In the instant case, the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties as a letter carrier and his diagnosed left shoulder injury. Thus, appellant has failed to meet his 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 FECA, OWCP's 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

¹⁹ *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

²⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²¹ *Id.*

²² *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

²³ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

²⁴ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

²⁵ *D.D.*, 57 ECAB 734 (2006).

not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.²⁶ Section 10.608(b) of OWCP's regulations provides that when an application for reconsideration 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.²⁷

ANALYSIS -- ISSUE 2

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

In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered by OWCP. Rather, he argued that his injury was employment related and described his employment duties.²⁸ The underlying issue in this case, however, was whether appellant sustained a left shoulder injury causally related to his repetitive federal employment duties. That is a medical issue which must be addressed by pertinent and relevant medical evidence.²⁹ The Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).³⁰

The only medical evidence received with appellant's reconsideration request was Dr. Lee's January 31, 2017 medical note. However, this same report was previously addressed and evaluated by OWCP in its June 1, 2017 merit decision. As the report is duplicative of evidence already in the case record, it does not constitute pertinent new and relevant medical evidence. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.³¹ A claimant may obtain a merit review of an OWCP decision by submitting pertinent new and relevant medical evidence. In this case, appellant failed to submit any pertinent new and relevant medical evidence addressing causal relationship.³² The Board accordingly finds that he did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left shoulder injury causally related to the accepted factors of his federal employment. The Board also finds

²⁶ *D.K.*, 59 ECAB 141 (2007).

²⁷ *K.H.*, 59 ECAB 495 (2008).

²⁸ *Sherry A. Hunt*, 49 ECAB 467 (1998).

²⁹ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

³⁰ 20 C.F.R. § 10.606(b)(3)(i) and (ii).

³¹ *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

³² *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated September 21 and June 1, 2017 are affirmed.

Issued: August 8, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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