

shoulder while in the performance of duty. He related that, while working limited duty as a result of a prior left shoulder injury, a door struck his “left shoulder knocking it out of socket.” At the time of his injury, appellant was wearing a shoulder isolator. The employing establishment did not controvert the claim. Appellant stopped work on March 13, 2017.

In a report dated March 17, 2017, Dr. Randall James Roy, an orthopedic surgeon, evaluated appellant for left shoulder instability and pain, noting that he initially dislocated his shoulder on February 23, 2017 “trying to grab a cooling tower....” He subsequently experienced repeated shoulder dislocations. Dr. Roy diagnosed left shoulder pain, instability, internal derangement, and a possible rotator cuff injury. He opined that appellant was unable to work and referred him for a magnetic resonance imaging (MRI) scan arthrogram.

A left shoulder MRI scan arthrogram, performed April 10, 2017, revealed a small posterior labral tear and probable sublabral foramina in the anterior labrum. Appellant also received treatment from a nurse practitioner.

On April 18, 2017 Dr. Roy requested authorization from OWCP for left shoulder surgery.

By letter dated April 21, 2017, OWCP advised appellant that it had paid a limited amount of medical expenses as his injury was uncontroverted and appealed minor. It was now formally adjudicating his claim. OWCP requested that appellant submit a detailed medical report from his attending physician addressing causal relationship between a diagnosed condition and the identified work incident. A medical chemistry report dated April 12, 2017 and several diagnostic reports were submitted.

In a decision dated June 6, 2017, OWCP denied appellant’s traumatic injury claim. It found that the medical evidence was insufficient to establish a medical condition due to the accepted March 13, 2017 work incident.

Thereafter, OWCP received additional evidence. Dr. Roy, in a March 17, 2017 work status note, received by OWCP on June 26, 2017, found that appellant was unable to work pending the results of his MRI scan study. He provided the initial date of injury as February 23, 2017.

On April 11, 2017 Dr. Roy described appellant’s history of an injury on February 23, 2017 with repeated subsequent dislocations. He diagnosed left shoulder anterior instability and recommended surgery. In a June 21, 2017 work status report, Dr. Roy indicated that the date of injury was February 23, 2017, diagnosed left shoulder instability, and found that appellant could not return to work until after surgery on July 20, 2017.

Appellant, on June 27, 2017, requested reconsideration. He related that while at work on February 23, 2017 he dislocated his left shoulder and strained his back. A physician released appellant back to work with restrictions on March 13, 2017. At work on March 13, 2017, a door struck his left shoulder and knocked it from the socket. Appellant described his medical treatment and noted that OWCP told him to file a new traumatic injury claim and that his shoulders cases might be combined. OWCP later determined that the cases should remain separate, which caused confusion with paperwork.

Appellant submitted March 13, 2017 x-rays of his left shoulder and medical evidence regarding a February 23, 2017 injury. He also resubmitted the April 10, 2017 left shoulder MRI scan arthrogram.

By decision dated July 13, 2017, OWCP denied appellant's request for reconsideration as he had not submitted evidence or raised an argument sufficient to warrant reopening his case for further merit review under section 8128(a). It found that the evidence submitted was either duplicative or not relevant to the issue at hand.

On appeal appellant describes his February 23, 2017 injury, the March 13, 2017 employment incident, and the medical treatment received. He asserts that he followed OWCP's instructions in filing a new claim for the March 13, 2017 incident, but was now not receiving continuation of pay.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ that he or she sustained an injury in the performance of duty as alleged, and that disability from work, if any, was causally related to the employment injury.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of probative medical evidence, to establish a causal relationship between the employment incident and the condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁷

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ and

² *Id.*

³ *See R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1142 (1989).

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *See T.H.*, 59 ECAB 388 (2008).

⁸ *John J. Montoya*, 54 ECAB 306 (2003).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury when a door struck his previously injured left shoulder on March 13, 2017. He has established that the March 13, 2017 incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has failed to establish that the March 13, 2017 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹²

Dr. Roy, in a March 17, 2017 report, discussed appellant's complaints of instability and pain in the left shoulder. He noted that on February 23, 2017 appellant had dislocated his shoulder trying to grab a cooling tower and since that time had dislocated his shoulder numerous times. Dr. Roy diagnosed left shoulder internal derangement and instability and found that appellant was unable to work. He did not, however, provide a history of the March 13, 2017 work incident or references whether the diagnosed left shoulder derangement and instability resulted from a door striking appellant's shoulder on that date. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³

The remainder of the medical evidence, including the April 10, 2017 MRI scan study arthrogram of the left shoulder and request for surgical authorization is of limited probative value as it does not contain a physician's opinion explaining causal relationship between the March 13, 2017 work incident and his left shoulder condition.¹⁴

OWCP also received evidence from a nurse practitioner on March 13, 2017. However, a nurse practitioner is not considered a physician under FECA. Thus, this report is of no probative medical value in establishing his claim.¹⁵

On appeal appellant describes the injuries to his left shoulder on February 23 and March 13, 2017 and the medical treatment received. He maintains that he followed the advice of OWCP to file a new claim for the March 13, 2017 employment incident. As discussed, however, appellant has the burden of proof to submit medical evidence establishing that he sustained an

¹⁰ *Supra* note 8.

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹³ *See D.P.*, Docket No. 17-1025 (issued August 18, 2017); *A.D.*, 58 ECAB 149 (2006).

¹⁴ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ *See P.J.*, Docket No. 17-0991 (issued August 15, 2017).

injury causally related to the March 13, 2017 employment incident.¹⁶ He has not submitted a physician's report which describes how the incident on March 13, 2017 caused or aggravated a left shoulder condition and thus failed to meet his burden of proof.¹⁷

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 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,¹⁸ OWCP's regulations provide 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.¹⁹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, OWCP must receive the request for reconsideration within one year of the date of OWCP's decision for which review is sought.²⁰ 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.²¹

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²² The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²³ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's timely request for reconsideration of the merits of his claim under section 8128(a). The underlying issue is whether

¹⁶ See *supra* note 6.

¹⁷ See *P.J.*, *supra* note 15.

¹⁸ *Supra* note 1. Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application."

¹⁹ 20 C.F.R. § 10.606(b)(3).

²⁰ *Id.* at § 10.607(a).

²¹ *Id.* at § 10.608(b).

²² *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

²³ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

²⁴ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

he submitted sufficient medical evidence to establish an injury causally related to the accepted March 13, 2017 employment incident.

In his June 27, 2017 request for reconsideration, appellant described an injury at work on February 23, 2017 and the circumstances surrounding the March 13, 2017 employment incident. He related that OWCP told him to file a new claim, which caused confusion due to his prior claim. The issue, however, is whether the medical evidence supports that appellant sustained an injury caused or aggravated by the March 13, 2017 work incident. As the issue is medical in nature, it can only be resolved through the submission of medical evidence.²⁵ Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.²⁶

With his request for reconsideration, appellant resubmitted the April 10, 2017 left shoulder MRI scan arthrogram. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²⁷

In a work status note dated March 17, 2017, Dr. Roy found that appellant was disabled pending an MRI scan study and indicated that the date of the initial injury was February 23, 2017. On April 11, 2017 he provided a history of a February 23, 2017 injury and diagnosed anterior instability of the left shoulder. In a work status report dated June 21, 2017, Dr. Roy listed the date of injury as February 23, 2017, diagnosed left shoulder instability, and found that appellant was disabled from work. None of these reports address the relevant issue of whether he sustained an injury at work on March 13, 2017, and thus are insufficient to require further review of the merits of his claim.²⁸

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit new and relevant evidence not previously considered. As he did not meet the necessary regulatory requirements, he is not entitled to further merit review.²⁹

CONCLUSION

The Board finds that appellant has not established a left shoulder condition causally related to the accepted March 13, 2017 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim under section 8128(a).

²⁵ See *George C. Vernon*, 54 ECAB 319 (2003).

²⁶ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

²⁷ See *J.P.*, *id.*; *Richard Yadron*, 57 ECAB 207 (2005).

²⁸ See *C.C.*, Docket No. 17-0508 (issued September 12, 2017).

²⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 13 and June 6, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 18, 2018
Washington, DC

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

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

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