



## **SSUES**

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective July 20, 2015, as she no longer had any residuals or disability causally related to her accepted June 1, 2012 employment-related injury; (2) whether appellant met her burden of proof to establish continuing disability after July 20, 2015; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On June 1, 2012 appellant, then 52-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained injuries to her left arm/shoulder when she tripped and fell over a skid rack while in the performance of duty. OWCP accepted the claim for left shoulder sprain and disorder of the bursa and tendons and paid compensation benefits on the supplemental rolls. Appellant underwent OWCP-authorized arthroscopies to her left shoulder on August 23, 2012 and on December 2, 2013. OWCP paid her wage-loss compensation benefits on the supplemental rolls as of August 23, 2012, and on the periodic rolls as of January 12, 2014.

To determine the status of appellant's accepted conditions and disability, OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 31, 2014 report, Dr. Smith reviewed the statement of accepted facts (SOAF) and the medical record and reported his examination findings. He opined that appellant was at maximum medical improvement (MMI) relative to the June 1, 2012 employment injury as of October 31, 2014 and further, that she did not require any additional treatment or diagnostic testing related to the accepted injury. He noted that there were no objective injury or surgical residuals identified on examination. Dr. Smith opined that appellant could return to full-time, regular duty as a postal clerk. He also noted that functional capacity examination (FCE) results were pending.

On December 2, 2014 OWCP received appellant's October 30, 2014 FCE report, which noted a light-work capacity. On May 12, 2015 it requested that Dr. Smith provide an addendum report based on review of the October 30, 2014 FCE report and progress notes from appellant's treating physician regarding post diagnostic arthroscopy, arthroscopic limited debridement of glenohumeral joint, arthroscopic revision subacromial decompression, and arthroscopic-assisted biceps tenodesis-subpectoral, which was performed on December 2, 2013.

In a December 2, 2014 report, Dr. Umasuthan Srikumaran, a Board-certified orthopedic surgeon, agreed with the FCE determination that appellant could perform light-duty work. In his December 11, 2014 report, he again indicated that appellant's limitations were due to her pain complaints. Dr. Srikumaran also noted that a magnetic resonance imaging (MRI) scan showed intact rotator cuff, tendinopathy and unchanged labral degeneration were noted.

In a May 22, 2015 addendum, Dr. Smith reported that the October 30, 2014 FCE study indicated that appellant was capable of full-time light-duty work with limitations. However, during his examination, appellant gave submaximal effort. Dr. Smith further reported that the limitations noted appear to be due to appellant's subjective complaints rather than any truly

objective abnormality, such as muscle atrophy or nerve deficit. Taking into account the above information, Dr. Smith found that there was no reason to change his previous opinion that appellant had reached MMI on October 31, 2013 and that she could return to full-time regular-duty work as a postal clerk.

On June 9, 2015 OWCP notified appellant of its proposed termination of her entitlement to wage-loss compensation and medical benefits based on the opinion of Dr. Smith, the second opinion physician, who opined that there were no residuals or disability causally related to the June 1, 2012 work injury. Appellant was provided 30 days to submit additional information.

In a June 25, 2015 report, Dr. Robert W. Macht, a general surgeon, noted the history of injury, appellant's medical course and his examination findings. Diagnoses of the left shoulder included rotator cuff tendinitis, biceps tendon degeneration, labral degeneration and fraying, glenohumeral joint synovitis and subacromial bursitis and adhesions, which were determined at the time of her December 2, 2013 surgical procedure. He indicated that appellant had reached MMI with regard to her left shoulder by October 31, 2014 and provided an impairment rating based on appellant's limited range of motion. Dr. Macht reported that appellant was not capable of performing full-time regular duty work due to her problems with her left shoulder. He further reported that it was unlikely that there would be significant improvement at any time in the near future that would enable her to perform useful service as a full-time regular-duty postal clerk. Dr. Macht explained that, based on her examination, history and complaints, she was unable to lift heavy objects, push and pull a heavy cart, perform prolonged actions above head and throw things with weight above head. He opined that she suffered with significant residuals and restrictions because of her current problems with her left shoulder.

By decision dated July 21, 2015, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective July 20, 2015. It accorded the weight of the medical evidence to Dr. Smith, the second opinion physician.

On August 3, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on December 29, 2015. Counsel argued that Dr. Smith failed to address the additional conditions that Dr. Macht had discussed in his report, and that OWCP failed to address the fact that appellant's restrictions limited her from performing full-time full-duty work, including her date-of-injury position. Appellant testified that Dr. Smith's evaluation was short and inadequate, lasting about 10 minutes.

Following the hearing, counsel submitted a January 5, 2016 letter with additional evidence and argument. He requested that an October 5, 2015 letter be included in the hearing record as his final argument for the reversal of the termination decision and/or remand of the claim for a less-biased impartial medical examiner.<sup>3</sup> In that October 5, 2015 letter, counsel stated that Dr. Smith appeared to base his opinion that appellant's limitations were subjective on the 2014 FCE examination, which indicated that she may not have used maximum effort on all of the tests. He argued that since the 2014 FCE examination was conducted and since Dr. Smith's evaluation, other physicians had observed appellant's functional and physical limitations. Dr. Smith noted

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<sup>3</sup> Counsel indicated that he had previously submitted his October 5, 2015 letter. That letter however is not found in the case record prior to this January 2016 submission.

that Dr. Macht correctly stated that the earlier FCE had no bearing on her impairment evaluation conducted nearly a year later and argued that Dr. Macht's impairment report contradicted Dr. Smith's findings as there were positive findings of restricted range of motion. Counsel also argued that appellant was a priority mail clerk who could no longer perform the duties of her job description. Additional evidence including an October 9, 2014 MRI scan of the left shoulder was submitted.

In an August 6, 2015 report, Dr. Srikumaran reported that appellant was 20 months post left diagnostic arthroscopy, arthroscopic limited debridement of glenohumeral joint, arthroscopic revision subacromial decompression, and arthroscopic-assisted biceps tenodesis-subpectoral. He reported that she was working part-time light duty and managing well, but the employing establishment wanted her to return to full duty. Dr. Srikumaran reported examination findings and provided an assessment of left shoulder pain. He indicated that appellant was able to tolerate six to eight hours light-duty desk work and, as she continued to have pain, recommended no heavy lifting, reaching and overhead pulling.

Dr. Macht, in an August 11, 2015 report, Dr. Macht indicated that appellant had more than a work-related shoulder sprain. As evidenced by her history, he indicated that she had impingement syndrome, rotator cuff tendinitis, biceps tendon degeneration, labral degeneration and synovitis. Dr. Macht stated that he reviewed the October 2014 FCE report and found that it confirmed range of motion loss. He advised that the range of motion loss was worse than what he had found on June 23, 2015 as it was self-limited. Dr. Macht explained why his range of motion results were better but were still indicative of an abnormality. He also noted that there appeared to be some disagreement concerning appellant's work requirements. Dr. Macht stated that appellant reported that she had to push and pull heavy mail containers that weighed over 100 pounds and lift 70-pound mailbags or more without assistance. He indicated that appellant would not be able to lift a maximum of 30 pounds continuously or intermittently and that her restrictions were less than that.

By decision dated March 11, 2016, an OWCP hearing representative affirmed the July 21, 2015 decision. The hearing representative found that Dr. Smith's opinion constituted the weight of the medical evidence in the termination of appellant's wage-loss compensation and medical benefits. Also, the medical evidence submitted was insufficient to establish that appellant had ongoing disability or related residuals of the accepted work injury.

On April 18, 2016 OWCP received appellant's reconsideration request from her counsel. New evidence was submitted.

In a March 29, 2016 report, Dr. Macht noted that OWCP accepted conditions of sprain of left shoulder and upper arm and disorder of bursa and tendons in left shoulder region and that those conditions would not warrant surgery. However, since OWCP approved surgery, he opined that the diagnoses from the second surgery were causally related to the work injury and the first procedure. He noted that the October 9, 2014 MRI scan of the left shoulder confirmed the rotator cuff tendinitis and labral degeneration and fraying. Dr. Macht advised that appellant had a normal left shoulder prior to the June 1, 2012 employment injury. He stated that she was right hand dominant and advised that her left shoulder diagnosis demonstrated on MRI scan and/or surgery are causally related to the June 1, 2012 employment injury. Dr. Macht provided restrictions and

opined that appellant remained disabled from any postal service occupation that required the use of the left arm and shoulder and provided restrictions.

In an April 12, 2015 report, Dr. Srikumaran stated that appellant's left shoulder pain began after a fall onto her shoulder at work on June 1, 2012. Appellant left shoulder pain worsened over several months and she did not report a history of any pain in the shoulder or any injury of the left shoulder prior to the employment injury. Dr. Srikumaran noted that her evaluation, which included her symptoms, signs and imaging, was consistent with biceps tendinitis and superior labral tear from anterior to posterior (SLAP tear), which he opined were causally related to the June 1, 2012 employment injury. He noted that the first surgery on August 23, 2012 performed a debridement and decompression, but did not address the biceps tendon. Dr. Srikumaran noted that a biceps tenodesis was performed to address the SLAP tear and biceps tendinitis, in addition to the revision subacromial decompression and debridement on December 2, 2013. He indicated that one year after surgery, appellant's subjective shoulder value was 75 percent. Objective assessment revealed good range of motion with some limitations and good strength, with ongoing pain with some overhead motions. Dr. Srikumaran opined that considering there were no symptoms or issues in her left shoulder prior to the work injury, appellant's current condition was related to her work injury and the subsequent care she received. At no time during her care have her initial conditions fully resolved; rather, they have been managed with various modalities. Dr. Srikumaran opined that appellant was at MMI from her surgery. However, because appellant had ongoing pain with overhead motion, he recommended light or administrative duty only with restrictions on overhead lifting, reaching and pulling with the left arm.

By decision dated July 19, 2016, OWCP denied modification of the March 11, 2016 decision. It found that the additional reports from Dr. Macht and Dr. Srikumaran did not support ongoing work-related disability as the physicians failed to provide a rationalized medical opinion explaining how appellant's current conditions were related to the work injury and/or subsequent treatment for the effects of the work injury.

On September 30, 2016 appellant, through counsel, requested reconsideration. New evidence was submitted in support of the request.

In a September 1, 2016 medical note, Dr. Srikumaran reiterated his opinion set forth in his April 12, 2015 report. He stated that considering that appellant had no symptoms or issues with her left shoulder prior to the work injury, appellant's current condition was related to her work injury and the subsequent care she received. At no time during her care had her initial conditions fully resolved; rather, they have been managed with various modalities. Dr. Srikumaran opined that appellant was at MMI from her surgery. Because of her ongoing pain with overhead motion, he recommended light or administrative duty only with restrictions on overhead lifting, reaching and pulling with the left arm.

In a September 21, 2016 report, Dr. Macht indicated that he reviewed Dr. Smith's October 31, 2014 report and found that there was no evidence that the effects of the work injury had ceased. He noted that in the examination section, Dr. Smith noted abnormal flexion and abduction range of motion findings upon which an impairment could be assigned. Dr. Macht stated that Dr. Smith offered no explanation of why he concluded that appellant's examination was limited by "subjective factors" and he did not explain why subjective factors limited abduction

and flexion and not internal rotation, external rotation, adduction and extension. He also took issue with Dr. Smith's finding that appellant had reached MMI in light of the fact his examination stated that she had a surgical residual of scars and the October 9, 2014 shoulder MRI scan which showed evidence of her acromioplasty and acromial decompression. Dr. Macht also continued to opine that the diagnoses based on the operative notes should be accepted conditions.

By decision dated October 14, 2016, OWCP denied appellant's request for reconsideration as she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further review of the merits under section 8128(a). It found that the submitted evidence was substantially similar to evidence previously of record and reviewed.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Smith, OWCP's referral physician. The October 13 and May 22, 2014 reports from Dr. Smith establish that appellant no longer had any residuals or disability as a result of her accepted employment injury.

In his October 13, 2014 report, Dr. Smith reviewed the SOAF and the medical record and reported his examination findings. He noted active range of motion findings and stated that appellant's limitations were due to subjective factors. Dr. Smith opined that appellant was at MMI relative to the June 1, 2012 employment injury as of October 31, 2014 and that she did not require any additional treatment or testing related to the incident. He noted that, while she had subjective residuals of shoulder pain that limited her shoulder motion, there were no objective injury or surgical residuals identified on examination. Given the benign clinical presentation, Dr. Smith opined that appellant could return to full-time, regular duty as a postal clerk. He also noted that FCE results were pending. In a May 22, 2015 addendum, Dr. Smith reviewed the October 30, 2014 FCE report and noted that, during the examination, appellant gave submaximal effort. He indicated that the limitations appeared to be due to appellant's subjective complaints rather than

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<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

any truly objective abnormality, such as muscle atrophy or nerve deficit. Accordingly, Dr. Smith found that there was no reason to change his previous opinion that appellant had reached MMI with regard to the June 1, 2012 employment injury on October 31, 2013 and that she could return to full-time regular-duty work as a postal clerk.

The Board has reviewed the October 13 and May 22, 2014 opinions of Dr. Smith and finds that his opinions have reliability, probative value, and convincing quality with respect to his conclusions regarding the relevant issue of the present case. Dr. Smith provided a thorough factual and medical history and accurately summarized the relevant medical evidence, including the FCE.<sup>7</sup> He provided medical rationale for his opinion by explaining that appellant no longer had objective evidence of her June 1, 2012 work injury. Dr. Smith explained that appellant had an elevated level of symptomology given the lack of objective organic findings from the clinical examination. He indicated that there did not appear to be any additional requirement for treatment, testing, or activity modification with regard to the accepted employment incident. Dr. Smith's opinion was based on a review of appellant's medical record, including objective studies, and his physical examination. His opinion was well rationalized and represents the weight of the medical evidence.<sup>8</sup>

In a December 2 and 11, 2014 reports, Dr. Srikumaran, appellant's treating physician, noted that appellant's limitations were based upon her pain complaints. He offered no explanation as to whether appellant had residuals of the accepted conditions. While Dr. Srikumaran also noted MRI scan findings of tendinopathy and unchanged labral degeneration, these are not accepted conditions. The Board has held that medical evidence without an opinion regarding the cause of an employee's condition is of limited probative value.<sup>9</sup> Thus, Dr. Srikumaran's opinion was of diminished probative value.

In his June 25, 2015 report, Dr. Macht noted appellant's history of injury, her medical course and his examination findings. He also noted that diagnoses following her December 2, 2013 arthroscopic procedure included rotator cuff tendinitis, biceps tendon degeneration, labral degeneration and fraying, glenohumeral joint synovitis and subacromial bursitis and adhesions. Dr. Macht indicated that appellant reached MMI with regard to her left shoulder by October 31, 2014 and provided an impairment rating based on limited range of motion. He also opined that appellant suffered significant residuals and restrictions because of her current problems with her left shoulder and she was not capable of performing full-time regular duty at the employing establishment. However, Dr. Macht's report is of limited probative value because he did not provide any medical rationale in support of his opinions. His findings are based primarily on appellant's subjective complaints and limited range of motion. Dr. Macht did not discuss the results of the October 29, 2014 FCE and to what extent she self-limited that examination. Furthermore, OWCP has not accepted the diagnoses stemming from the second operation as causally related to the June 1, 2012 work injury. While Dr. Macht discussed additional conditions,

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<sup>7</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>8</sup> *M.K.*, Docket No. 15-1903 (issued May 6, 2016).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004).

he provided no discussion or explanation as to how the employment-related accepted conditions or related surgeries caused or resulted in the diagnosed conditions. The Board notes that the only accepted conditions were left shoulder sprain and disorder of the bursa and tendons. The additional conditions diagnosed by Dr. Macht have not been accepted as work-related conditions. He failed to provide any opinion that these conditions were caused or aggravated by appellant's June 1, 2012 work injury. 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 on the issue of causal relationship.<sup>10</sup>

The remainder of the medical evidence, including the October 9, 2014 MRI scan report, fails to offer any opinion regarding the cause of appellant's current condition and is of limited probative value on the issue of causal relationship.<sup>11</sup>

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective July 20, 2015 as the medical evidence of record established that appellant no longer had residuals or disability causally related to the accepted conditions of left shoulder sprain and disorder of the bursa and tendons.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that any subsequent disability is causally related to the accepted injury.<sup>13</sup>

To establish a causal relationship between the claimed condition, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>14</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition, disability and the specific employment factors identified by the employee.<sup>15</sup>

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<sup>10</sup> See *A.H.*, Docket No. 16-1828 (issued August 17, 2017).

<sup>11</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, *supra* note 9.

<sup>12</sup> See *J.V.*, Docket No. 16-1246 (issued December 9, 2016); *L.C.*, Docket No. 12-1177 (issued August 19, 2013).

<sup>13</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>14</sup> *G.T.*, 59 ECAB 447 (2008); *Elizabeth Stanislave*, 49 ECAB 540 (1998).

<sup>15</sup> See *N.T.*, Docket No. 14-0694 (issued February 19, 2016).

## ANALYSIS -- ISSUE 2

Following OWCP's July 21, 2015 decision terminating appellant's wage-loss compensation and medical benefits, effective July 20, 2015, appellant submitted additional medical evidence, which she alleged established that she was entitled to compensation after July 20, 2015 due to residuals of her work injuries.

The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that she had residuals of her accepted June 1, 2012 employment injury after July 20, 2015. None of the additional reports submitted by appellant provide detailed medical rationale to establish continuing disability or residuals due to the accepted employment conditions and, therefore, the new evidence of record is insufficient to create a conflict with Dr. Smith's reports.

In his August 11, 2015 report, Dr. Macht attempted to clarify his June 25, 2015 report. He related that, by history, appellant had additional conditions of impingement syndrome, rotator cuff tendinitis, biceps tendon degeneration, labral degeneration and synovitis. The Board notes, however, that these additional conditions were not accepted as employment related by OWCP. Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>16</sup> Dr. Macht failed to offer a rationalized medical opinion that appellant had work-related disability or need for medical care after July 20, 2015, or that the additional conditions mentioned were employment related. As Dr. Macht failed to provide an opinion that appellant was disabled from work on or after July 20, 2015 due to the June 1, 2012 employment injury, this report is insufficient to meet appellant's burden of proof.<sup>17</sup>

In his March 29, 2016 report, Dr. Macht opined that the diagnoses from the second surgery were causally related to the work injury and the first operation. He noted that the October 9, 2014 MRI scan of the left shoulder confirmed the rotator cuff tendinitis and labral degeneration and fraying. Dr. Macht explained that appellant had a normal left shoulder prior to the June 2, 2012 accident and that since OWCP approved surgery, her left shoulder diagnosis demonstrated on MRI scan and/or surgery were causally related to the June 1, 2012 employment injury. However, other than noting that appellant did not have a left shoulder condition prior to the work injury, Dr. Macht did not provide a rationalized medical opinion explaining how appellant's current conditions/symptoms are causally related to the work injury. The Board has held that an opinion

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<sup>16</sup> *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>17</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. *See Lee R. Haywood*, 48 ECAB 145 (1996).

that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>18</sup>

In an August 6, 2015 report, Dr. Srikumaran provided an assessment of left shoulder pain. He noted that appellant was only able to tolerate six to eight hours light-duty desk work. The Board notes that Dr. Srikumaran failed to provide a firm medical diagnosis other than left shoulder pain. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.<sup>19</sup> The Board has consistently held that pain is a symptom of a condition, not a compensable medical diagnosis.<sup>20</sup> For this reason Dr. Srikumaran's report is also insufficient to establish continuing employment-related disability.

In his April 12, 2015 report, Dr. Srikumaran summarized his medical treatment of appellant and explained that appellant's first arthroscopic procedure on August 23, 2012 did not address the biceps tendon issues which he opined were causally related to the June 1, 2012 accident. He noted that a biceps tenodesis was performed to address the SLAP tear and biceps tendinitis, in addition to the revision subacromial decompression and debridement on December 2, 2013. Dr. Srikumaran opined that considering there were no symptoms or issues regarding her left shoulder prior to the work injury, appellant's current condition was related to her work accident and the subsequent care she received. Again, other than noting that appellant did not have a left shoulder condition prior to the work injury, Dr. Srikumaran did not provide a rationalized medical opinion explaining how appellant's diagnosed conditions were related to the accepted injury. As previously noted, an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>21</sup>

Because appellant has not submitted reasoned medical opinion evidence sufficient to establish that she suffered from employment-related residuals or disability on or after July 20, 2015 as a result of her accepted June 1, 2012 employment injury, the Board finds that she has not met her burden of proof.<sup>22</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>23</sup>

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<sup>18</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>19</sup> *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain).

<sup>20</sup> *C.F.*, *id.*

<sup>21</sup> *See supra* note 16.

<sup>22</sup> *Supra* note 14.

<sup>23</sup> 5 U.S.C. § 8128(a).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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>24</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>25</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>26</sup>

### **ANALYSIS -- ISSUE 3**

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

In her September 26, 2016 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Along with her reconsideration request, appellant provided a September 1, 2016 report from Dr. Srikumaran, and a September 21, 2016 report from Dr. Macht. Although Dr. Srikumaran's September 1, 2016 report was not previously considered by OWCP, the Board finds that it is substantially similar and duplicative of evidence previously considered and reviewed by OWCP. In his September 1, 2016 medical note, Dr. Srikumaran reiterated his opinion set forth in his April 12, 2015 report, which OWCP addressed in its July 19, 2016 decision. He continued to opine that appellant's current condition was related to her work injury and the subsequent care she received as she had no symptoms or issues in her left shoulder prior to the work injury. Dr. Srikumaran further opined that because of her ongoing pain with overhead motion, appellant could only work light or administrative duty with restrictions on overhead lifting, reaching and pulling with the left arm. 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.<sup>27</sup>

In his September 21, 2016 report, Dr. Macht explained why he disagreed with Dr. Smith's October 31, 2014 report. He contended that Dr. Smith had noted abnormal flexion and abduction range of motion findings, but offered no explanation of why he concluded that appellant's examination was limited by "subjective factors." Dr. Macht also continued to opine that the

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<sup>24</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>25</sup> *Id.* at § 10.607(a).

<sup>26</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>27</sup> *E.M.*, Docket No. 09-0039 (issued March 3, 2009).

accepted conditions should be expanded to include the diagnoses based on the operative notes. The Board has found that OWCP properly relied on the opinion of OWCP's referral physician, Dr. Smith, in terminating appellant's compensation effective July 20, 2015. It was further determined that while Dr. Macht discussed additional conditions and continuing disability, his opinion regarding causal relationship was of limited probative value. The arguments presented by Dr. Macht in his September 21, 2016 report are substantially similar to his prior opinions and have previously been considered by OWCP. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.<sup>28</sup>

As these medical reports do not constitute relevant new and relevant evidence, the Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On appeal counsel argues that appellant's continuing restrictions and additional conditions following the first surgery are causally related to her June 1, 2012 work injury. He further argues that it was error for OWCP to rely on Dr. Smith's opinion. However, appellant's own disagreement with Dr. Smith's findings is irrelevant to the medical issue in the case, which can only be resolved through the submission of probative medical evidence from a physician.<sup>29</sup> As previously discussed, Dr. Smith provided a well-rationalized medical opinion, based on the entire medical record and his examination findings that the effects of the work injury have ceased. The medical evidence from appellant's physicians failed to support ongoing work-related disability or residuals as they did not provide a rationalized medical opinion which explained how appellant's current conditions/symptoms were related to the June 1, 2012 work injury or the subsequent treatment for the effects of the work injury.

### **CONCLUSION**

The Board finds OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 20, 2015 as she no longer had any residuals or disability causally related to her accepted June 1, 2012 employment injury. The Board also finds that appellant has not met her burden of proof to establish residuals or continuing disability after July 20, 2015 causally related to the accepted employment injury. Finally, the Board finds that OWCP properly 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>28</sup> See *J.R.*, Docket No. 17-1083 (issued November 17, 2017).

<sup>29</sup> *K.H.*, Docket No. 14-1824 (issued May 4, 2015); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 14 and July 19, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 17, 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