

container while in the performance of duty. The employing establishment controverted the claim and indicated that she did not report the incident until March 20, 2014.

OWCP received a March 21, 2014 duty status report (Form CA-17) noting a March 7, 2014 date of injury, which indicated that appellant was moving postal containers and sprained her right shoulder and arm.² It also received a March 21, 2014 attending physician's report (Form CA-20), advising that on March 7, 2014 she was pulling postal containers and sprained her right shoulder and arm. Additionally, OWCP received a March 24, 2014 duty status report, from an internist whose signature is illegible, which also contained a March 7, 2014 date of injury. It received attending physician's reports and duty status reports dated April 2, 9, and 16, 2014 from an internist, whose signature is illegible, who placed appellant on limited duty for her right shoulder sprain/strain.

In a March 20, 2014 statement, appellant indicated that, on March 7, 2014, a Thursday through Friday night shift, she pulled a postal container that was full of heavy items. She related that she did not know that she had injured her arm until she tried to pull a rack and felt pain. Appellant explained that she told an employing establishment official and her union representative what happened, and that she would see her physician on March 26, 2014.

In a March 21, 2014 treatment note, Dr. Manuel Ceja, an internist, indicated that appellant presented with pain in the right shoulder, which she reported occurred on March 7, 2014. He noted that, at that time, she was working as a mail clerk and pulled a heavy postal container filled with mail and felt a slight pain in her right shoulder. Dr. Ceja explained that appellant's next shift was on March 9, 2014 and she again pulled a heavy postal container and felt the same pain in her right shoulder. He related that she reported that she informed several supervisors and initially wanted to see her own physician, with an appointment scheduled for March 26, 2014, but the physician changed the appointment. Dr. Ceja noted that the prior evening appellant again attempted to lift mail from a postal container and her pain worsened. He explained that she could not wait for her physician and was now presenting for evaluation. Dr. Ceja diagnosed sprain and strain of the right shoulder and arm. He also saw appellant on March 24 and April 9 and 16, 2014.

By development letter dated May 5, 2014, OWCP advised appellant that when her claim was first opened it appeared to be a minor injury that resulted in minimal or no lost time from work and the employing establishment did not controvert continuation of pay. However, appellant's claim was now being reopened because it had received an indication that she had not returned to work in a full-time capacity. OWCP advised her to submit additional factual information and respond to questions posed in the attached questionnaire with regard to the alleged incident. It afforded appellant 30 days to provide the additional information.

OWCP received additional attending physician's reports and copies previously submitted reports dated April 9, 10, 16, and 30, 2014. Appellant was continued on partial disability.

By decision dated June 5, 2014, OWCP denied appellant's claim, finding that she had not established that the claimed incident occurred as alleged. It noted that she had not responded to the factual development questionnaire. Furthermore, as the employing establishment contended

² The physician's signature was illegible.

appellant did not report the incident until March 20, 2014, OWCP had advised her to clarify the date. However, no response was received.

On June 18, 2014 appellant requested a hearing, which was held before an OWCP hearing representative on November 24, 2014. She also provided responses to the factual development questionnaire and explained what happened on the evening of March 20, 2014. Appellant noted that she also submitted a statement from her coworker, R.H., who was her partner on March 20, 2014. She explained that the March 7, 2014 incident, felt like a shoulder “stinger” and that she notified the employing establishment. Appellant further explained that she continued her duties without concerns or issues until March 20, 2014. She noted that she initially took Tylenol for the pain until she could see a physician. Appellant denied any similar or prior symptoms. She indicated that she reported the March 7, 2014 injury on March 9, 2014, most importantly to show the state of the equipment, she was working with. Appellant denied seeking treatment for the March 20, 2014 incident.

In a separate June 16, 2014 statement, appellant indicated that on March 7, 2014 she was working and moved a postal container to her assignment. She explained that, in the process of moving the mail, the wheels locked and froze, causing the equipment to come to an immediate stop, while she was pulling it. Appellant explained that she felt pain, but the pain subsided and she continued to work. She also indicated that she notified her supervisor on March 9, 2014. Additionally, appellant noted that she had no problems between March 7 to 19, 2014 in regard to her shoulder. On March 20, 2014 she explained that she was working her normal assignment, when she attempted to move mail from the postal container to the feeder ledge of the machine. Appellant indicated that, when she tried to lift the ledge, she felt an excruciating pain and weakness radiating down her right arm to her right shoulder. She also promptly reported to her manager, and when she went to the medical unit, she was deemed totally disabled with a diagnosis of shoulder sprain/strain.

Appellant’s coworker, R.H., provided a June 9, 2014 statement advising that on March 20, 2014 appellant was working on the postal container when he witnessed her lifting the postal container ledge and in doing so, she sustained an injury to her right shoulder.

OWCP received a copy of Dr. Ceja’s April 16 and 30, 2014 reports and what appears to be physical therapy notes dated October 27, 2014. It also received an unsigned August 27, 2014 report.

OWCP also received new reports from Dr. Ceja dated May 14, June 27, and September 24, 2014. Dr. Ceja examined appellant and repeated his findings and diagnoses.

In an October 22, 2014 note, Dr. Ceja indicated that the original injury was actually March 20, 2014. He also noted that appellant had a previous right shoulder injury in 2012. Dr. Ceja continued to keep her on restricted duties.

By decision dated January 21, 2015, OWCP’s hearing representative modified the June 5, 2014 decision to find that appellant clarified through her hearing testimony that no injury occurred on March 7, 2014. Rather, appellant alleged that she injured her right arm on March 20, 2014, while lifting the feeder edge on a Delivery Bar Code Sorter (DBCS) machine. However, the claim

remained denied as the evidence of record was insufficient to establish causal relationship between the accepted work incident and her diagnosed conditions. The hearing representative found that the medical evidence of record was insufficient to establish that such activity caused a right shoulder condition, as the physicians of record inaccurately reported a March 7, 2014 injury.

On April 22, 2015 appellant requested reconsideration. She explained that on March 20, 2014 she tried to lift the steel shelving of the postal container to gain access to the mail at the bottom half of the equipment. When appellant lifted the lid on the ledge, she felt an excruciating pain and weakness radiating down her right arm from her right shoulder. She also noted that she notified her manager of her injury. Appellant also explained that the March 7, 2017 date, was an error caused by the employing establishment, and that she worked full duty until she was injured on March 20, 2014.

OWCP received a copy of a December 1, 2014 report from Dr. Ceja.

In a January 16, 2015 report, Dr. Ceja related that March 20, 2014 was the date of injury. He diagnosed sprain and strain of unspecified site of the shoulder and upper arm. Dr. Ceja saw appellant on February 27, 2015 and repeated his findings and noted that she was currently working light duty.

In an April 3, 2015 report, Dr. Ceja noted that it was a follow-up evaluation. He also discussed the date of injury and noted that there had been some confusion about her original date of injury and therefore the magnetic resonance imaging (MRI) scan was on hold. Dr. Ceja related that appellant indicated that her injury was on March 20, 2014, and not March 7, 2014 as had been originally reported. He also related that she indicated that she was “pushing up” on a postal container with her right arm as the cause of injury and not “pulling” the postal container. Dr. Ceja explained that, on her initial forms, appellant had written “[March 7, 2014] at 11:00 pm” as the original date of injury and that she was “pulling” the postal container, not pushing up on it. He noted that she produced a report from OWCP and he related that the issue was that she had not reported her injury on March 20, 2014, as she alleged and all initial paperwork for the claimed injury had a date of injury of March 7, 2014. Dr. Ceja also noted that it was not until October 22, 2014, that appellant requested an amendment to the date of injury and subsequent to that her follow-up examination dates noted her date of injury as March 20, 2014, and not March 7, 2014. He opined that it was “unclear as to why she noted it on our registration forms and not March 20, 2014 as she now claims. Appellant states that, on March 20, 2014, when she injured herself, she did inform a supervisor who did fill out initial paperwork, but somehow it was never submitted.” Dr. Ceja repeated his diagnosis of sprain and strain of other specified sites of the right shoulder and arm.

In an April 3, 2015 attending physician’s report, Dr. Ceja noted that appellant was pushing a heavy postal container with her right arm, when she felt pain in the shoulder. He checked a box marked “yes” in response to whether she had a previous history of concurrent or preexisting injury or disease and filled in right shoulder rotator cuff injury in 2012. Dr. Ceja advised that appellant currently had pain in the right shoulder and diagnosed right shoulder strain/sprain. He indicated that the first examination was March 21, 2014. Dr. Ceja advised that appellant resumed light work on April 6, 2014. He also completed a duty status report on that date and recommended that she could return to work with restrictions on April 2, 2014.

OWCP received unsigned notes that appear to be physical therapy reports dated February 4, March 11, 13, 16, 18, 23, 27, and 30, and April 6 and 22, 2015.

By decision dated July 17, 2015, OWCP denied modification of its January 12, 2015 decision. It specifically noted that the medical and factual evidence of record did not provide a consistent or clear explanation of how or when her injury occurred.

On April 18, 2016 appellant requested reconsideration. She explained that she worked from March 7 through 20, 2014, which was supported by her time and attendance reports, which she submitted at her hearing. Appellant explained that the employing establishment alleged that the date of injury occurred on March 7, 2014, but they had firsthand knowledge that she was performing her duties from March 7 through 20, 2014. She noted that their documentation contradicted their argument that she sustained an on-the-job injury on March 7, 2014. Appellant also noted that she was submitting a right shoulder MRI scan report dated January 9, 2016, which established that she suffered a diagnosed work-related injury on March 20, 2014.

A January 9, 2016 MRI scan, which contained a March 31, 2016 addendum, was read by Dr. John O'Donnell, a radiologist. In the addendum, he noted that appellant had pain and weakness since March of 2014. Dr. O'Donnell found: moderate tendinosis of the supraspinatus and infraspinatus tendon with foci of interstitial tearing at the insertion of the anterior fibers of the infraspinatus tendon and junctional insertional fibers of the supraspinatus/infraspinatus tendons; mild subacromial/subdeltoid bursitis; and moderate-to-severe acromioclavicular joint arthrosis with osteophyte formation contacting the supraspinatus myotendinous junction.

By decision dated July 15, 2016, OWCP denied modification of its July 17, 2015 decision. It found that the evidence of record was sufficient to establish that the employment incident of March 20, 2014 occurred as alleged and that appellant was in the performance of duty. OWCP also found that she was diagnosed with a right shoulder sprain in connection with the employment incident of March 20, 2014. However, the claim remained denied as the evidence was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident.

On January 3, 2017 appellant requested reconsideration. She argued that her manager improperly listed March 7, 2014 as the date of injury on her paperwork and then she had to prove that he put the wrong information on the paperwork. Appellant indicated that she was sending a copy of her MRI scan again, and hoped that OWCP would reconsider her claim.

By decision dated February 7, 2017, OWCP denied appellant's request for reconsideration, finding that it did not include relevant new evidence or legal argument and was therefore insufficient to further merit warrant review.

Appellant again requested reconsideration on April 11, 2017.

OWCP received a copy of an OSHA complaint related to ergonomic hazards at the employing establishment and a March 25, 2009 letter from the union to local presidents related to hazards of working with the DBCS machines.

OWCP also received a copy of appellant's March 20, 2014 traumatic injury claim form with the first page completed with a March 20, 2014 date of injury.

In a June 29, 2017 statement, appellant indicated that she injured her rotator cuff on March 20, 2014 while working on the DBCS machine. She also indicated that she was injured on the DBCS machine in 2012 and had a right shoulder rotator cuff tear. Appellant explained that she was fine and returned to full duty in 2013.

OWCP received a copy of the January 9, 2016 MRI scan, which contained a March 31, 2016 addendum.

By decision dated July 7, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was irrelevant or immaterial and insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a). On January 3, 2017 appellant requested reconsideration of the July 15, 2016 merit decision. She argued that her manager improperly listed the wrong date of injury on her paperwork and then she had to prove that he put the wrong information on the paperwork. The Board notes that this argument is irrelevant to the underlying

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.608(b).

issue of causal relationship because OWCP already accepted March 20, 2016 as the date of the employment incident.

Appellant also argued that she was sending a copy of her MRI scan again, and hoped that OWCP would reconsider her claim. The Board notes that the January 9, 2016 MRI scan, which contained a March 31, 2016 addendum, was previously submitted and considered by OWCP in its July 15, 2016 decision. The Board has held that evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case.⁶ Furthermore, diagnostic studies are of no probative value on the issue of causation as they do not address whether the employment incident caused any of the diagnosed conditions.⁷

OWCP also received a copy of a letter dated September 27, 2016, in which appellant asked an individual for assistance with her claim. This would not be relevant or pertinent new evidence as the underlying merit issue in the case is medical in nature.⁸

Appellant again requested reconsideration of the July 15, 2016 merit decision on April 7, 2017. She provided a copy of an OSHA complaint related to ergonomic hazards at the employing establishment and a March 25, 2009 letter from the union to local presidents related to hazards of working with the DBCS machines. Additionally, appellant provided a copy of her March 20, 2014 traumatic injury claim form with the first page completed with a March 20, 2014 date of injury. Furthermore, she provided a June 29, 2017 statement in which she indicated that she injured her rotator cuff on March 20, 2014 while working on the DBCS machine. Appellant also indicated that she was injured on the DBCS machine in 2012 and had a right shoulder rotator cuff tear. She explained that she was fine and returned to full duty in 2013. However, the claimed incident of March 20, 2014, has been accepted by OWCP as having occurred as alleged. The Board notes that the claim remained denied on the issue of causal relationship and medical evidence is needed to establish appellant's claim. Therefore, this evidence does not constitute relevant and pertinent new evidence on the issue of whether she established a traumatic injury causally related to the accepted March 20, 2014 employment incident.⁹

Appellant's requests for reconsideration therefore 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 constituted pertinent new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

⁶ *D.K.*, 59 ECAB 141 (2007).

⁷ *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

⁸ *See supra* note 4.

⁹ *Id.*

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 7 and February 7, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 10, 2018
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