

FACTUAL HISTORY

On November 8, 2016 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder on that date while working with letters and flats. She stopped work on November 8, 2016.

In support of her claim appellant submitted magnetic resonance imaging (MRI) scans dated November 14 and 21, 2016. She also submitted disability notes with work restrictions dated November 8 and 11, 2016 from Dr. Andrew M. Knoernschild, a treating Board-certified family medicine physician, which related that she could return to work on November 11, 2016 with restrictions regarding the use of her right arm. Progress notes dated November 8, 11, and 14, 2016 from Dr. Knoernschild, reported a history of injury, provided examination findings, and diagnosed right shoulder strain.

In a November 14, 2016 work restriction form, Dr. Timothy J. Morton, a treating physician specializing in orthopedic surgery, diagnosed right shoulder strain, which he concluded was work related, and noted an injury date of November 8, 2016. He released appellant to light-duty work.

By development letter dated December 1, 2016, OWCP advised appellant that further medical evidence was necessary to establish her claim. It informed her that medical evidence was also necessary to establish any period of disability. OWCP afforded appellant 30 days to submit the necessary evidence.

On December 6, 2016 appellant was seen by Dr. Morton for right shoulder complaints. Dr. Morton reported that her examination was unchanged and she was to continue with light-duty work.

Appellant submitted claims for compensation (Form CA-7) and Time Analysis Forms (Form CA-7a) claiming intermittent wage loss for 74 hours³ for the period December 24, 2016 to January 6, 2017 and 56 hours of LWOP for the period January 7 to 20, 2017.

By decision dated January 13, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that she sustained a right shoulder condition causally related to the accepted November 8, 2016 employment incident.

In progress notes dated November 28 and December 19, 2016, and February 7 and 9, 2017, Dr. Rory R. Wright, an examining Board-certified orthopedic surgeon, discussed appellant's medical treatment, reviewed diagnostic tests, and diagnosed right shoulder degenerative joint disease, right shoulder rotator cuff disease, and right shoulder biceps tendon tear. On February 9, 2017 he attributed the acceleration in her right shoulder osteoarthritis to her prior shoulder surgery, cumulative work exposure, and recent shoulder injuries.

³ In the employing establishment statement/certification, the employing establishment noted 80 hours of leave without pay (LWOP) was verified, but noted 74 hours of LWOP and 6 hours worked in the designated columns on the time analysis form (Form CA-7a).

A November 14, 2016 MRI scan of the right shoulder revealed no acute dislocation or fracture, acromioclavicular (AC) joint disease, and glenohumeral osteoarthritis with large osteophyte at humeral head inferior aspect.

In a November 17, 2016 report, Dr. Wright, an examining Board-certified orthopedic surgeon, noted that appellant was seen on November 14, 2016 for a right shoulder injury sustained at work on November 8, 2016. He noted her medical history and provided examination findings. Dr. Wright diagnosed acute right shoulder injury due to a workplace injury and suspected rotator cuff and bicipital injury. He indicated that appellant was capable of light-duty work.

A November 21, 2016 MRI scan revealed an abnormal right rotator cuff, mild rotator cuff muscular atrophy, moderate AC joint degenerative arthritis, and severe full-thickness chondromalacia of the humeral head and portions of the glenoid.

Dr. Morton, in November 28, 2016 progress notes, reported that appellant continued to have right shoulder problems and had been evaluated by Dr. Wright. He recommended total right shoulder replacement. Dr. Morton indicated that appellant would continue to work with restrictions.

In a December 19, 2016 return to work authorization, Dr. Wright released appellant to return to work on December 20, 2016 with restrictions.

In a February 24, 2017 letter, Dr. Wright explained why the requested total right shoulder arthroplasty surgery was due to appellant's federal employment duties and should be authorized by OWCP.

On April 21, 2017 OWCP referred appellant for a second opinion evaluation with Dr. David S. Haskell, a Board-certified orthopedic surgeon. In a May 10, 2017⁴ report Dr. Haskell, based upon a physical examination and review of the statement of accepted facts and medical records, opined that the November 8, 2016 work incident caused a temporary aggravation of her preexisting right shoulder degenerative glenohumeral joint arthritis. He also concluded that there was no disability in connection with this injury. In support of this conclusion, Dr. Haskell explained that appellant's November 8, 2016 injury caused no permanent change or altered the course of the underlying condition.

By decision dated May 24, 2017, OWCP granted modification of the denial of the claim based on Dr. Haskell's report. It found that the medical evidence of record was sufficient to establish a temporary aggravation of preexisting right glenohumeral joint arthritis by the accepted November 8, 2016 work injury. However, OWCP further found that the medical evidence of record was insufficient to establish a period of disability.

⁴ The date on the report is May 8, 2017, which appears to be a typographical error as appellant was examined by Dr. Haskell on May 10, 2017.

By separate decision dated May 24, 2017, OWCP accepted appellant's claim for temporary aggravation of preexisting right shoulder glenohumeral joint arthritis, which it found had resolved by May 10, 2017.

Subsequent to the acceptance of her claim, OWCP received previously submitted MRI scans dated November 14 and 21, 2016 and reports from Drs. Haskell, Morton, Knoernschild, and Wright.

On July 11, 2017 appellant requested reconsideration.

On August 1, 2017 OWCP received a June 8, 2017 work authorization from Dr. Wright releasing appellant to light-duty work pending surgery. The diagnosis was right shoulder pain, which he opined was work related.

By decision dated October 6, 2017, OWCP denied appellant's request for reconsideration. It found that the evidence was insufficient to warrant merit review of the decision dated May 24, 2017 as the evidence submitted with the request for reconsideration was irrelevant or duplicative and thus had no bearing on the issue of entitlement to intermittent wage-loss compensation.

LEGAL PRECEDENT

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 compensation at any time on his own motion or on application.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

⁵ 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁶ 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).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

ANALYSIS

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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.¹⁰ As such, she was 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).¹¹

A claimant may also be entitled to a merit review by submitting relevant and pertinent new evidence.

The underlying issue on reconsideration is medical in nature, whether appellant's disability was causally related to the accepted November 8, 2016 employment injury. She submitted new evidence in the form of a June 8, 2017 work authorization from Dr. Wright diagnosing work-related right shoulder pain and releasing appellant to light-duty work. This form report, however, did not discuss or offer any opinion regarding whether appellant's intermittent disability for the period December 24, 2016 to January 20, 2017 was causally related to the accepted November 8, 2016 employment injury. The Board has held that evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

Appellant also resubmitted medical evidence by Drs. Haskell, Morton, Knoernschild, and Wright and MRI scans dated November 14 and 21, 2016. The Board finds that the submission of these reports would not require OWCP to reopen her case for further review of the merits of the claim because the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹³

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance a point of law not previously considered by OWCP. She also did not submit relevant and pertinent new evidence. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of the claim.

CONCLUSION

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

¹⁰ See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹¹ *Supra* note 6 at § 10.606(b)(3).

¹² *D'Wayne Avila*, 57 ECAB 642 (2006).

¹³ *Candace A. Karkoff*, 56 ECAB 622 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 6, 2017 is affirmed.

Issued: August 24, 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