

**United States Department of Labor
Employees' Compensation Appeals Board**

A.D., Appellant)	
)	
and)	Docket No. 23-0148
)	Issued: May 22, 2023
U.S. POSTAL SERVICE, MEMORIAL POST)	
OFFICE, Bedford Park, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 9, 2022 appellant filed a timely appeal from a May 20, 2022 merit decision and August 10 and October 3, 2022 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a right foot condition causally related to the accepted January 3, 2022 employment incident; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 3, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

OWCP properly denied appellant's requests for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 5, 2022 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2022 he sustained a rupture of the right gastrocnemius Achilles tendon when he unloaded a postal vehicle while in the performance of duty. He stopped work on January 4, 2022 and returned to work on March 22, 2022.

Appellant submitted an unsigned medical report dated January 5, 2022 which noted a January 3, 2022 date of injury and a diagnosis of right gastrocnemius tendon rupture.

In a work excuse note dated January 5, 2022, Dr. Osaretin Idusuyi, a Board-certified orthopedic surgeon, recommended that appellant be excused from work until February 7, 2022 due to a rupture of the right gastrocnemius tendon. In a work excuse note dated February 7, 2022, He recommended that appellant be excused from work until March 21, 2022. In a note dated March 21, 2022, Dr. Idusuyi recommended that appellant could return to work with no restrictions on March 22, 2022.

In a development letter dated April 13, 2022, OWCP informed appellant that additional medical evidence was needed to establish his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

By decision dated May 20, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted employment incident of January 3, 2022.

On August 4, 2022 appellant requested reconsideration. With his request, he provided a narrative statement describing the January 3, 2022 incident.

By decision dated August 10, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim.

On August 23, 2022 appellant again requested reconsideration. He resubmitted his August 4, 2022 narrative statement describing the January 3, 2022 incident.

By decision dated October 3, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

³ *Supra* note 1.

limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 and specific employment incident.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a right foot condition causally related to the January 3, 2022 employment incident.

In support of his of January 3, 2022 traumatic injury claim, appellant submitted notes from Dr. Idusuyi. On January 5, 2022 Dr. Idusuyi recommended that appellant be excused from work until February 7, 2022 due to a rupture of the right gastrocnemius tendon. On February 7, 2022 he recommended that appellant be excused from work until March 21, 2022. On March 21, 2022 Dr. Idusuyi opined that appellant could return to work with no restrictions on March 22, 2022. While these notes related the medical diagnosis of a rupture of the right gastrocnemius tendon, they did not offer a medical opinion regarding the cause of appellant's diagnosed condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

employee's condition is of no probative value on the issue of causal relationship.¹⁰ Therefore, this evidence is insufficient to establish the claim.

Appellant also submitted an unsigned report dated January 5, 2022, which noted a date of injury and diagnosis. The Board has previously held that a medical note, which is unsigned or contains an illegible signature, lacks probative value, as it is not established that the author is a physician.¹¹ This report is therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted January 3, 2022 employment incident, the Board finds that appellant has not met 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

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 or her own motion or on application.¹²

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.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens

¹⁰ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *See Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA).

¹² 5 U.S.C. § 8128(a); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

¹³ 20 C.F.R. § 10.606(b)(3); *L.D., id.*; *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

and reviews the case on its merits.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

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

Appellant's requests for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, nor did they advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With his August 4, 2022 request for reconsideration, appellant submitted a narrative statement describing the accepted January 3, 2022 work incident. The underlying issue in this case, however, is medical in nature. Therefore, this factual evidence is irrelevant to the underlying issue and is insufficient to warrant merit review. With his August 23, 2022 request for reconsideration, appellant resubmitted his August 4, 2022 narrative statement. This evidence, however, is duplicative of evidence previously submitted and considered by OWCP. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a claim.¹⁷ Because appellant has not provided relevant and pertinent new evidence, he was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁸

The Board, accordingly, finds that appellant has not met 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 right foot condition causally related to the accepted January 3, 2022 employment incident. The Board further finds that OWCP properly denied his requests for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁵ *Id.* at § 10.608(a); *M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *D.B.*, Docket No. 22-1241 (issued April 27, 2023).

¹⁸ *See* 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the May 20, August 10, and October 3, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board