



## **FACTUAL HISTORY**

On May 21, 2014 appellant, then a 51-year-old supervising customs and border patrol officer, filed an occupational disease claim (Form CA-2) alleging that he developed pain on the soles of both of his feet as a result of walking and standing on his feet a large percentage of the time during his federal employment.

On July 1, 2014 OWCP informed appellant that the information submitted was insufficient to establish his claim and listed the evidence that he must supply to support his claim.

In response, appellant submitted a July 14, 2014 work status report wherein Dr. Thomas C. Bruff, a Board-certified internist with additional Board-certifications in occupational medicine and medical toxicology, indicated that appellant was treated for a work-related event and discharged to regular work effective that date.

By decision dated August 26, 2014, OWCP denied appellant's claim as he failed to establish the medical component of his claim.

Thereafter on September 8, 2014 OWCP received a May 15, 2014 report from Dr. Bruff. In this report Dr. Bruff noted appellant's subjective complaint as foot pain and listed objective findings of foot tenderness. In May 15 and 22, 2014 reports, he indicated that he had treated appellant for bilateral foot strain which appeared to be work related as a result of cumulative trauma to the foot due to prolonged walking and standing. Dr. Bruff placed appellant on modified duty, sitting work only.

On April 7, 2015 appellant requested reconsideration of the April 26, 2014 decision. In support thereof, he also submitted a June 12, 2014 follow-up report wherein Dr. Bruff noted treating him for bilateral foot strain, and that he was able to return to his usual and customary work. Appellant also submitted a July 14, 2014 report wherein Dr. Bruff noted that he was treated for foot strain, resolved, and that he was at full-duty status and discharged.

By decision dated April 23, 2015, OWCP denied modification of its prior decision as appellant had not established a firm medical diagnosis in connection with the injury and/or events.

On April 28, 2015 appellant requested reconsideration. At that time, he resubmitted the reports of Dr. Bruff dated May 15 and 22, June 12, and July 14, 2014.

By decision dated June 3, 2015, OWCP denied appellant's request for reconsideration without conducting a merit review.

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

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged,

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factor identified by the claimant.<sup>6</sup>

### ANALYSIS -- ISSUE 1

There is no dispute that appellant is engaged in standing and walking as part of his employment. The Board finds that appellant has not established, however, that a medical condition resulted from these accepted employment factors. Initially, Dr. Bruff noted that appellant sustained foot pain and foot tenderness. The Board has held that pain is a symptom rather than a firm medical diagnosis.<sup>7</sup> Therefore, this report does not establish a compensable medical diagnosis. In his other reports, Dr. Bruff diagnosed foot strain, but failed to provide a rationalized analysis with regard to how the factors of appellant's employment led to this foot strain. In the May 15, 2014 report, Dr. Bruff noted that the bilateral foot strain injury appeared to be employment related as a result of cumulative trauma to the foot due to prolonged walking and standing. The Board notes that the use by Dr. Bruff of the phrase "appeared to be employment related" indicates that his opinion was speculative. The Board has held that medical

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<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>4</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>7</sup> *L.J.*, Docket No. 14-1595 (issued September 16, 2015).

opinions which are speculative or equivocal are of diminished probative value.<sup>8</sup> Furthermore, Dr. Bruff does not discuss the specific factors of appellant's employment. For example, he does not note specifically how much walking and standing appellant did during his employment. Dr. Bruff also does not provide a medical explanation as to how this walking and standing resulted in appellant's alleged injury.

Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>9</sup> 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.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Because appellant failed to submit a rationalized medical report establishing a medical diagnosis causally related to his accepted factors of federal employment, he failed to meet his burden of proof to establish his case.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

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

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>11</sup> OWCP's regulations provide that the evidence or argument submitted by 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.<sup>12</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>13</sup> When a claimant fails to

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<sup>8</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

<sup>9</sup> *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

<sup>10</sup> See *Lee R. Raywood*, 48 ECAB 145 (1996).

<sup>11</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>12</sup> 20 C.F.R. § 10.606(b)(3).

<sup>13</sup> *Id.* at § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits. OWCP conducted a merit review of appellant's claim in its decision dated April 23, 2015. On April 28, 2015 appellant requested reconsideration, and resubmitted reports from Dr. Bruff dated May 15 and 22, June 12 and July 14, 2014. Submission of evidence which repeats or duplicates evidence already in the record does not constitute a basis for reopening a case.<sup>15</sup> This duplicative evidence is not sufficient to merit opening appellant's case for reconsideration.

The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered, or constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen his claim for further merit review.<sup>16</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish a bilateral foot injury causally related to his federal duties, as alleged. The Board further finds that OWCP properly refused to reopen his claim for merit review pursuant to 5 U.S.C. § 8128(a).

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<sup>14</sup> *Id.* at § 10.608(b).

<sup>15</sup> *See D.K.*, 59 ECAB 141 (2007).

<sup>16</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 3 and April 23, 2015 are affirmed.

Issued: January 8, 2016  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board