

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

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**K.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Clifton, NJ, Employer**

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**Docket No. 11-34  
Issued: August 2, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 4, 2010 appellant filed a timely appeal from an April 8, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed from May 8, 2009, the date of the most recent OWCP merit decision, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without further merit review.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 16, 2008 appellant, then a 57-year-old letter carrier, filed an occupational disease claim alleging that she sustained posterior tibial tendinitis due to walking and standing all day. She stopped work on August 15, 2008. Appellant became aware of her condition and its relationship to her employment on May 16, 2008.

An August 18, 2008 note from Dr. Glenn R. Haber, a podiatrist, related that appellant experienced excessive foot pain. He commented that she underwent podiatric surgery on May 23, 2008, but subsequent treatment failed “[d]ue to excessive walking associated with [her] job.” Dr. Haber prescribed a walking boot for a minimum of three weeks.

OWCP notified appellant in an August 29, 2008 letter that the evidence was insufficient and advised her about the evidence needed to establish her claim. Appellant responded with an undated statement, which noted that she walked up and down steps between 8 and 10 hours each workday. She also underwent surgery in August 2007 for a right foot spur. No additional medical evidence was received.

By decision dated October 30, 2008, OWCP denied appellant’s claim, finding the medical evidence insufficient to establish that her accepted employment activities caused or aggravated a foot condition.

Appellant requested reconsideration on February 10, 2009. She submitted a January 29, 2009 report from Dr. Haber, who diagnosed acute plantar fasciitis and posterior tibial tendinitis. Dr. Haber opined, “[Appellant’s] job has exacerbated her foot condition due to her excessive walking and carrying a heavy [mailbag]. Her job contributed to her foot pathology.”

On May 8, 2009 OWCP denied modification of the October 30, 2008 decision.

Appellant requested reconsideration on March 1, 2010 and asserted that a premature return to work following her surgery for plantar fasciitis caused tibial tendinitis. She provided copies of Internet articles concerning the etiology of plantar fasciitis.

By decision dated April 8, 2010, OWCP denied appellant’s request for reconsideration on the basis that she did not submit new and relevant evidence warranting further merit review.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP regulations provide that the evidence or argument submitted by a claimant must either: (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>3</sup> Where the request for

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

### ANALYSIS

On March 1, 2010 appellant requested reconsideration and claimed that employment duties following her return from foot surgery contributed to posterior tibial tendinitis. This assertion does not show that OWCP erroneously applied or interpreted a specific point of law and it also does not advance a relevant legal argument not previously considered by OWCP. Appellant also submitted copies of Internet articles that described the causes of plantar fasciitis. This evidence, while new, is not relevant to the underlying medical issue. The Board has held that such articles lack evidentiary value as they are of general application and not determinative regarding whether specific conditions are causally related to the particular employment factors in a claim.<sup>5</sup> Therefore, appellant did not provide new and pertinent evidence warranting further merit review of her case.

Appellant contends on appeal that the medical evidence was sufficient to establish that her injury was work related. As noted, the Board lacks jurisdiction to review the merits of the case. The sole question before the Board is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without further merit review. As explained above, appellant did not submit new and pertinent medical evidence. Furthermore, she did not contend that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.<sup>6</sup> Because appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim, she is not entitled to reconsideration under section 8128(a) of FECA.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without further merit review.

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<sup>4</sup> *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

<sup>5</sup> *B.C.*, Docket No. 10-691 (issued October 19, 2010).

<sup>6</sup> See *Charles A. Jackson*, 53 ECAB 671 (2002) at n.14; *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board