

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

W.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, ME, Employer**

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**Docket No. 12-525
Issued: July 16, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2012 appellant filed a timely appeal from an August 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a traumatic injury claim and an October 7, 2011 nonmerit decision denying reconsideration. 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 the claim.

ISSUES

The issues are: (1) whether appellant established that he sustained a traumatic foot condition in the performance of duty; and (2) whether OWCP properly denied his request for reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant asserts that he developed bilateral plantar fasciitis due to walking 8 to 10 hours a day delivering mail over a 24-year period.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 6, 2011 appellant, then a 46-year-old letter carrier, filed a traumatic injury (Form CA-1) claiming that he sustained bilateral plantar fasciitis on September 1, 2010. He did not stop work.

In a July 18, 2011 letter, OWCP advised appellant of the evidence needed to establish his claim. It requested a detailed factual statement identifying the employment factors alleged to have caused the claimed injuries and a rationalized statement from a physician explaining how those factors caused the claimed injury. Appellant was afforded 30 days to submit such evidence.

In a July 21, 2011 letter, appellant clarified that he claimed bilateral plantar fasciitis. He submitted a July 20, 2011 duty status report (Form CA-17) from Dr. Robert Juris, an attending podiatrist, who diagnosed plantar fasciitis related to repetitive motion of the right foot. On August 3, 2011 Dr. Juris prescribed physical therapy.

By decision dated August 22, 2011, OWCP denied appellant's claim finding that fact of injury was not established. It found that he did not identify any causative work factors occurring on September 1, 2010. Therefore, the claimed injury could not be attributed to any aspect of his federal employment. OWCP further found that appellant did not submit sufficient medical evidence explaining how any factor of his duties as a letter carrier would cause or contribute to plantar fasciitis.

In a September 23, 2011 letter, appellant requested reconsideration. He stated that he developed left heel pain in September 2010 and right heel pain in May 2011. On June 1, 2011 Dr. Juris diagnosed plantar fasciitis. Appellant attributed the condition to delivering mail 8 to 10 hours a day over a 24-year period. He submitted a blank form dated July 26, 2011 signed by Dr. Juris.

By decision dated October 7, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant to the factual issue in the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 filed within the applicable time limitation; that an injury was sustained while 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

² *Id.*

employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ An employee has not met his burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee’s statements in determining whether a *prima facie* case has been established.⁹

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained bilateral plantar fasciitis on September 1, 2010. He submitted a form report from Dr. Juris, an attending podiatrist, who diagnosed plantar fasciitis due to repetitive motion of the right foot. Appellant also submitted a physical therapy prescription and business card. He did not fully explain what traumatic factors of his employment on September 1, 2010 caused the claimed plantar fasciitis. By decision dated August 22, 2011, OWCP denied the claim, finding that fact of injury was not established as appellant did not adequately identify the work factors alleged to have caused the claimed condition.

The Board notes that in a July 18, 2011 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed statement of the work factors alleged to have caused or contributed to the claimed condition. As appellant did not submit sufficient

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁸ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

information regarding which specific duties of his federal employment on September 1, 2010 caused the claimed bilateral plantar fasciitis, OWCP properly denied his claim.¹⁰ The Board notes that Dr. Juris did not relate any history of trauma to appellant's feet on September 1, 2010.

On appeal, appellant asserts that he developed bilateral plantar fasciitis due to walking 8 to 10 hours a day delivering mail over a 24-year period.¹¹ OWCP advised him on July 18, 2011 to further explain which of his job duties on September 1, 2010 caused or contributed to the claimed plantar fasciitis. However, appellant did not submit such a statement prior to OWCP's denial of the claim.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹² section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.¹³ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹⁵ The claimant need only submit relevant, pertinent evidence not previously considered by OWCP.¹⁶ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁷

ANALYSIS -- ISSUE 2

Following OWCP's August 22, 2011 decision denying his claim, appellant submitted a September 23, 2011 letter requesting reconsideration. He explained that he attributed the claimed plantar fasciitis to prolonged walking delivering mail during his 24-year career at the

¹⁰ *Gary J. Watling*, *supra* note 6.

¹¹ The Board notes that appellant implicates an occupational disease rather than a specific trauma as originally claimed. *See* 20 C.F.R. §§ 10.5(q) and 10.5(ee).

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹⁵ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁶ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹⁷ *Annette Louise*, 54 ECAB 783 (2003).

employing establishment. OWCP denied reconsideration by decision dated October 7, 2011, finding that appellant's letter was irrelevant to the claim.

The basis on which OWCP denied appellant's claim was that he had not identified those factors of his federal employment occurring on September 1, 2010 that would have caused the claimed plantar fasciitis. Appellant's September 23, 2011 letter does not address any incident occurring on or about September 1, 2010. Instead, he attributed the plantar fasciitis to prolonged walking while delivering mail over a period of years. Therefore, the September 23, 2011 letter is irrelevant to the claim and is insufficient to warrant a review of the claim on its merits.¹⁸ Similarly, the blank form signed by Dr. Juris on July 26, 2011 does not address a claimed work incident on or about September 1, 2010 and is also irrelevant to the claim.

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). He 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly issued its October 7, 2011 decision denying merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's traumatic injury claim. The Board further finds that it properly denied a request for reconsideration.

¹⁸ *Mark H. Dever, supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7 and August 22, 2011 are affirmed.

Issued: July 16, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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