

FACTUAL HISTORY

On August 14, 2009 appellant, then a 55-year-old mail handler, filed a Form CA-2 for occupational disease claim alleging that he sustained tendinitis in her lower extremity as a result of boarding and dismounting motor vehicles and pushing mail containers. Dr. Merchery J. Davis, an internist, diagnosed Achilles tendinitis in an August 5, 2009 medical form. Left ankle x-rays obtained on August 10, 2009 by Dr. James W. Blechman, a Board-certified diagnostic radiologist, were unremarkable. OWCP accepted the claim for left Achilles tendinitis.²

Appellant filed a Form CA-7 for disability compensation on October 21, 2009 for the period August 14 to October 23, 2009 and submitted medical evidence. In a September 10, 2009 report, Dr. William F. Garrahan, a Board-certified orthopedic surgeon, diagnosed partial tear of the Achilles tendon secondary to federal employment. He placed appellant on indefinite leave from work.

An October 6, 2009 magnetic resonance imaging (MRI) scan obtained by Dr. Bara Mouradi, a Board-certified diagnostic radiologist, exhibited severe noninsertional Achilles tendinitis and thickening. The scan did not show a tear.

Dr. Garrahan observed that the ruptured Achilles tendon was improving in October 15, 2009 notes. He reiterated that appellant's condition was "more than likely" due to his job duties, namely "jumping in and out of trucks" and standing for long durations. Dr. Garrahan released him to modified work beginning on October 24, 2009.

OWCP informed appellant in a November 10, 2009 letter that he was entitled to wage-loss compensation for the period September 10 to October 23, 2009, but additional evidence was needed to establish his claim for the period August 14 to September 9, 2009. It gave him 30 days to submit a medical report from a qualified physician explaining how his accepted condition resulted in his disability from August 14 to September 9, 2009.

In an October 28, 2009 duty status report, Dr. Garrahan diagnosed torn left Achilles tendon and recommended a modified four-hour work schedule effective October 15, 2009. He imposed restrictions on continuous lifting, standing, bending, stooping and simple grasping as well as intermittent walking, twisting, pulling, pushing, fine manipulation and reaching above the shoulder. Treatment notes dated November 18, 2009 from Dr. Garrahan related that appellant had difficulty performing his job and excused him from work until December 9, 2009.

In December 9, 2009 follow-up notes, Dr. Garrahan placed appellant on a modified four-hour work schedule for the period December 12, 2009 to January 1, 2010. He stated in a

² On January 6, 2010 appellant filed a Form CA-2a for recurrence of disability occurring on October 31, 2009. He subsequently filed a Form CA-7 for disability compensation on January 19, 2010 for the period October 31, 2009 to January 2, 2010. OWCP issued a January 28, 2010 decision accepting the recurrence claim and compensated appellant accordingly.

January 20, 2010 note that appellant experienced residual symptoms but resumed full-time duty. Dr. Garrahan opined that “[appellant] can safely go on and do his own work.”³

By decision dated January 29, 2010, OWCP denied appellant’s compensation claim, finding that the medical evidence did not sufficiently establish disability for the period August 14 to September 9, 2009.

On January 11, 2011 appellant requested reconsideration, arguing that he should have received compensation for the period August 14 to September 9, 2009 since OWCP paid his medical expenses. In addition, he submitted new evidence. A physician assistant’s undated emergency department note diagnosed torn Achilles tendon and advised that appellant was unable to return to work until he received an orthopedic consultation. A January 20, 2010 work status note from Dr. Garrahan checked a space indicating that he may continue full-time duty. Appellant also provided copies of Dr. Garrahan’s September 22, 2009 report and December 9, 2009 work status note and various physical therapy records.

By decision dated April 7, 2011, OWCP denied appellant’s request for reconsideration on the grounds that he did not present new evidence or legal contentions warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ 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.⁵ Where the request for 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.⁶

ANALYSIS

OWCP accepted appellant’s occupational disease claim for left Achilles tendinitis and paid wage-loss compensation for the period September 10 to October 23, 2009, but denied compensation for the period August 14 to September 9, 2009. On January 11, 2011 appellant filed a reconsideration request and argued that he was entitled to compensation for this earlier period because OWCP already paid his medical expenses. The Board has held, however, that payment for medical expenses does not, in and of itself, constitute acceptance of a particular condition or disability in the absence of evidence indicating that a particular condition or

³ Appellant also provided physical therapy records from November 23, 2009 to January 18, 2010.

⁴ 5 U.S.C. § 8128(a).

⁵ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁶ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

disability has been accepted as work related.⁷ Appellant's legal contention, therefore, did not contain an adequate legal premise having some reasonable color of validity.⁸

As part of his application for reconsideration, appellant furnished Dr. Garrahan's September 22, 2009 report and December 9, 2009 work status note as well as various physical therapy records, evidence previously of record all of which were already included in the case record. The submission of evidence that repeats or duplicates evidence already in the record does not constitute a basis for reopening a case.⁹ Appellant also submitted a physician assistant's undated emergency department note and a January 20, 2010 work status note from Dr. Garrahan. These documents, while new and not previously considered, were nonetheless immaterial because neither addressed whether appellant's left Achilles tendinitis rendered him disabled for work from August 14 to September 9, 2009.¹⁰ The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.¹¹ Since appellant failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to a further merit review of his claim.

Appellant raises several contentions on appeal implicating the merits of his case. The Board only has jurisdiction to consider whether OWCP properly denied his request for reconsideration based on the evidence and argument that was before OWCP at the time the April 7, 2011 decision was issued. As discussed above, appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim.

CONCLUSION

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

⁷ *Gary L. Whitmore*, 43 ECAB 441 (1992).

⁸ *Charles A. Jackson*, 53 ECAB 671 (2002) at n.14; *Daniel O'Toole*, 1 ECAB 107 (1948).

⁹ *Edward W. Malaniak*, 51 ECAB 279 (2000).

¹⁰ Furthermore, evidence from a physician's assistant is not relevant as it cannot be considered as medical evidence and the underlying issue in this case is medical in nature. *See E.K.*, Docket No. 09-1827 (issued April 21, 2010) (lay individuals such as physicians' assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2).

¹¹ *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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