United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 12-1098**
	)	**Issued: September 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 23, 2012 appellant filed a timely appeal from a December 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) and an April 6, 2012 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a right foot injury in the performance of duty on February 3, 2011; and (2) whether OWCP properly denied his request for further merit review under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 23, 2011 appellant, then a 60-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2011 he sustained a right foot and heel injury when he was walking his route and felt pain. He notified his supervisor on February 23, 2011.

In medical reports dated February 8 to March 30, 2011, appellant's attending physician, Dr. Marc Frankel, a podiatrist, reported that appellant complained of right heel foot pain, worse when he would step down, plantar medial, poststatic dyskinesia. He noted that appellant's x-ray of the right foot revealed normal findings and an ultrasound examination revealed inflammation of the proximal plantar fascia. Dr. Frankel diagnosed unspecified fasciitis, calcaneal spur, contracture of ankle and foot joint, pain in soft tissues of the limbs, nontraumatic rupture of other tendons of the foot and ankle and unspecified enthesopathy of the ankle and tarsus.

In a February 18, 2011 attending physician's report (Form CA-20), Dr. Frankel stated that appellant complained of heel pain which began while he was at work. He noted no history of preexisting injuries and diagnosed plantar fasciitis. Dr. Frankel checked the box marked "yes" when asked if he believed the condition was caused or aggravated by appellant's employment activity.

By letter dated April 13, 2011, OWCP requested additional factual and medical evidence from appellant and asked that he respond to the provided questions within 30 days.

In an April 16, 2011 narrative statement, appellant reported that while he was walking his morning postal route he stepped down and felt pain in his right foot. He finished his tour and took Motrin at home. Appellant noted that he did not play any sports and did not have any prior lower extremity conditions.

In medical reports dated April 14 to 21, 2011, Dr. Frankel diagnosed unspecified fasciitis and pain in soft tissues of the limb. He stated that appellant was released to return to work on April 22, 2011 with no restrictions.

By decision dated May 19, 2011, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that his foot and ankle conditions were causally related to the accepted February 3, 2011 employment incident.

On May 27, 2011 appellant requested review of the written record before the Branch of Hearings and Review.

Appellant submitted a May 24, 2011 medical report from Dr. Frankel, who stated that he disagreed with the May 19, 2011 decision. Dr. Frankel stated that appellant had a severe case of plantar fasciitis which resulted in micro tears of the ligament and was a chronic rupturing of the ligamentous fibers. He stated that it is was well known as an overuse injury which was typically exacerbated by occupations that included long periods of standing, walking, climbing ladders, etc. At times, plantar fasciitis was an insidious process that developed over time, without a specific acute event that a particular patient could reference. Dr. Frankel noted that typically, patients who develop this occupational-type injury continued working until he or she no longer could. Although it was impossible to develop a causal relationship in many medical conditions,

appellant's plantar fasciitis was the result of his postal work. Dr. Frankel concluded that there was nothing else in appellant's medical history that could possibly be a contributing factor to the development of a severe case of ligamentous injury other than his postal work.

By decision dated December 15, 2011, the hearing representative affirmed the May 19, 2011 decision finding that the medical evidence of record failed to establish that appellant's right foot condition was causally related to the accepted February 3, 2011 employment incident. He found that Dr. Frankel's May 24, 2011 report described appellant's condition as arising over a period of time and that appellant could file an occupational disease claim if he attributed his condition to long periods of walking or standing.

By letter dated January 9, 2012, appellant requested reconsideration of the December 15, 2011 OWCP decision. He stated that, prior to February 3, 2011, he did not have any medical issues with his right foot and sustained his injury while walking on his route. Appellant contended that Dr. Frankel's reports were sufficient to establish causal relation. No new evidence was submitted to the record.

By decision dated April 6, 2012, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[3]

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 which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2.

a causal relationship.[5] 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 factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

OWCP accepted that the February 3, 2011 employment incident occurred as alleged. The issue is whether appellant established that walking his route that day caused his right foot injury. The Board finds that he did not submit sufficient medical evidence to support that his plantar fasciitis injury is causally related to the February 3, 2011 employment incident.[7]

In medical reports dated February 8 to May 24, 2011, Dr. Frankel noted that appellant complained of right foot pain. Upon physical examination and review of diagnostic testing, he diagnosed plantar fasciitis, calcaneal spur, contracture of ankle and foot joint, pain in soft tissues of the limbs, nontraumatic rupture of other tendons of the foot and ankle and unspecified enthesopathy of the ankle and tarsus. In a February 18, 2011 Form CA-20, Dr. Frankel diagnosed plantar fasciitis and noted that appellant complained of heel pain which began while he was at work. He checked the box marked "yes" when asked if he believed the condition was caused or aggravated by appellant's employment activity.

In his May 24, 2011 report, Dr. Frankel stated that appellant had a severe case of plantar fasciitis which resulted in micro tears of the ligament and represented a chronic rupturing of the ligamentous fibers. He described it as an overuse injury which was typically exacerbated by occupations that included long periods of standing and walking. Plantar fasciitis was an insidious process that developed over time, without a specific acute event that a particular patient could reference. Dr. Frankel noted that typically, patients who developed this occupational injury continued working until he or she no longer could. Although it was impossible to develop a causal relationship in many medical conditions, appellant's plantar fasciitis was the result of his postal work. Dr. Frankel concluded that there was nothing else in the medical history that could possibly be a contributing factor to appellant developing the ligamentous injury and his injury was a result of his postal work.

The Board finds that the opinion of Dr. Frankel is not well rationalized. While Dr. Frankel diagnosed plantar fasciitis, he failed to adequately address how the accepted February 3, 2011 incident was competent to cause or contribute to the foot injury. He provided an opinion that appellant's right foot injury was a result of his postal work over a long period of

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *See Robert Broome*, 55 ECAB 339 (2004).

time but did not provide any details describing the February 3, 2011 employment incident or what duties appellant was performing on that date. Dr. Frankel's May 24, 2011 report notes that plantar fasciitis could be exacerbated by occupations that included long periods of standing and walking. This speaks to an occupational disease over multiple shifts rather than a traumatic injury. Dr. Frankel attributed appellant's injury to an occupational injury produced by appellant's work environment over a period longer than a single workday or shift rather than an injury from a single occurrence within a single workday as alleged by appellant in this claim.[8] His medical reports are not well explained on this aspect of causal relation. They do not support appellant's claim that he sustained a traumatic injury on February 3, 2011. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[9] 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.[10] Without adequate medical reasoning explaining how the February 3, 2011 employment incident caused or contributed to his injuries, Dr. Frankel's reports are insufficient to meet appellant's burden of proof.[11]

As noted by the hearing representative, if appellant is alleging that his injury was produced by his work environment over a period longer than a single workday or shift, he should file a claim of occupational disease, and submit rationalized medical evidence from a physician which describes his employment duties and provides an explanation on how these duties caused him injury.[12]

In the instant case, the record lacks sufficient medical evidence to establish a causal relationship between the February 3, 2011 employment incident and appellant's plantar fasciitis. Thus, appellant has failed to meet his burden of proof.

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 FECA section 8128(a), OWCP 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

[8] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[9] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[10] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[11] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[12] *See supra* note 10.

argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[13] Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration 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]

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his January 9, 2012 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's argument was that his injury was employment related and he referenced Dr. Frankel's reports which were previously considered and addressed by OWCP. The underlying issue in this case was whether his injury was causally related to the accepted February 3, 2011 employment incident. That is a medical issue which must be addressed by relevant medical evidence.[15] A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, appellant failed to submit any new and relevant evidence addressing causal relationship.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on February 3, 2011 in the performance of duty, as alleged. OWCP properly denied appellant's request for reconsideration without a merit review.

[13] *D.K.*, 59 ECAB 141 (2007).

[14] *K.H.*, 59 ECAB 495 (2008).

[15] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 6, 2012 and December 15, 2011 are affirmed.

Issued: September 19, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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