

FACTUAL HISTORY

On November 18, 2010 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging a left ankle injury while transferring trays of mail from the back of her postal vehicle to the front. Her left ankle collapsed causing her to fall backwards to the ground. The employing establishment responded “unknown” regarding whether appellant was in the performance of duty. Appellant stopped work on November 18, 2010 and returned on November 22, 2010.

Appellant submitted a May 14, 2007 report from Dr. Samuel Doppelt, a Board-certified orthopedic surgeon, who noted that she sustained a left ankle injury in November 2006 with a small avulsion fracture of the talus and osteochondral defect of the talus. Dr. Doppelt saw appellant on August 13, 2007 and treated her for the November 2006 injury.

In a June 24, 2011 attending physician’s report, Dr. Doppelt noted that appellant had left ankle arthritis with new instability. He checked the box “yes” in response to whether appellant had a history of concurrent or preexisting injury or disease or physical impairment. Dr. Doppelt filled in all related to work injury of November 2006. He noted that appellant would have a magnetic resonance imaging (MRI) scan of the left ankle on July 12, 2011. Dr. Doppelt explained that a new diagnosis would be provided based upon the results. He checked the box “yes” in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Doppelt placed appellant off work.

By decision dated June 27, 2011, OWCP denied appellant’s claim. It found that the evidence did not substantiate that the November 18, 2010 incident occurred as alleged.

In a July 28, 2011 attending physician’s report, approximately one month since his last examination, Dr. Doppelt diagnosed an osteochondral defect (OCD) of the talus in the left ankle. He checked the box “yes” in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Doppelt recommended arthroscopic surgery of the left ankle and a micro fracture procedure for the new OCD of the talus. He indicated that appellant remained unable to return to work.

On August 3, 2011 appellant requested reconsideration and submitted additional evidence.

In a decision dated November 10, 2011, OWCP modified the June 27, 2011 decision to find that the November 18, 2010 incident occurred at the time, place and in the manner alleged. It found that appellant did not submit sufficient medical evidence to establish that the November 18, 2010 incident caused or aggravated a back or ankle condition.

On May 25, 2012 appellant requested reconsideration and submitted additional medical evidence.

In an April 1, 2012 report, Dr. Doppelt noted appellant’s history of injury and treatment. He noted that her original left ankle injury of November 14, 2006 occurred when she twisted her ankle delivering mail. Dr. Doppelt noted that a magnetic resonance imaging (MRI) scan from 2008 revealed an osteochondral injury in the posterolateral talus. He noted that appellant fell at

home in April 2010 and sustained an injury to both ankles. Dr. Doppelt further noted that in November 18, 2010, appellant was injured at work when her left ankle gave way while lifting boxes into her vehicle. He noted that appellant related that she felt and heard a pop in her left ankle. Dr. Doppelt examined appellant and advised that her July 12, 2012 MRI scan revealed an area of abnormal signal in the dorsolateral talar dome and posterolateral subtalar joint.

In a May 3, 2012 attending physician's CA-20 report, Dr. Doppelt noted that appellant sustained an injury on November 18, 2010. He advised that appellant had an MRI scan which revealed "OCD" of the talus. Dr. Doppelt checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity. He filled in "because no symptoms prior to work accident."

In a decision dated August 31, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [OWCP]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the denial of her claim for an injury in the performance of duty and timely requested reconsideration on May 25, 2012. The underlying issue on reconsideration is medical in nature, whether the November 18, 2010 work incident contributed to an injury.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

On May 25, 2012 appellant timely requested reconsideration of OWCP's November 10, 2011 merit decision and submitted new medical evidence from Dr. Doppelt. This included his May 3, 2012 attending physician's report in which he listed the date of injury as November 18, 2010 and opined that appellant's condition was work related by checking a box yes and stating "because no symptoms prior to work accident." Dr. Doppelt noted appellant's history and addressed causal relationship. In his April 1, 2012 report, he noted appellant's history and advised that on November 18, 2010 appellant was injured at work when her left ankle gave way while lifting boxes. Thereafter, OWCP denied appellant's application on August 31, 2012, finding that no new evidence was offered warranting further merit review.

However, the Board notes that the April 1 and May 3, 2012 reports from Dr. Doppelt provided additional details pertaining to causal relationship. Although Dr. Doppelt had previously submitted reports supporting causal relationship, these reports did not provide any reasoning or address how the claimed injury occurred. The Board finds that the April 1 and May 3, 2012 reports from Dr. Doppelt constitute relevant and pertinent new evidence not previously considered by OWCP as he addressed the underlying issue of appellant's ankle. The April 1, 2012 report notes that appellant's ankle gave way while lifting boxes at work while the May 3, 2012 report states that her condition was work related because she had no prior symptoms. Therefore, OWCP was obligated to conduct a merit review of the claim when she submitted this new evidence in support of her reconsideration request.⁵ On remand it shall conduct a merit review of the entire record. After such further development as is deemed necessary, OWCP shall issue an appropriate merit decision.

On appeal, appellant argued that her condition stemmed from her 2006 injury. The Board notes that the present claim pertains to her November 18, 2010 injury. As noted above, this case is not in posture for decision. It is being remanded for a merit review of the claim.

CONCLUSION

The Board finds that OWCP improperly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁵ *D.M.*, Docket No. 10-1844 (issued May 10, 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2012 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: October 29, 2013
Washington, DC

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

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

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