

OWCP properly denied her August 20, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case was previously before the Board.

On May 11, 2011 appellant, then a 58-year-old passport processing supervisor, filed a traumatic injury claim alleging that on May 10, 2011 she experienced pain in her right ankle and feet when she stepped on a black binder clip and almost fell down. She stopped work on May 13, 2011 and returned on May 17, 2011.

In a decision dated June 30, 2011, OWCP denied appellant's traumatic injury claim. It accepted that the May 10, 2011 incident occurred as alleged and that she sustained a right ankle condition but denied her claim finding insufficient medical evidence to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.

Appellant submitted multiple requests for a review of the written record and reconsideration. By decisions dated October 12, 2011 and February 7, 2012, OWCP affirmed the June 30, 2011 decision denying her claim on the grounds that the medical evidence failed to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.

On February 10, 2012 appellant filed a timely appeal to the Board.

By decision dated September 14, 2012, the Board affirmed the October 12, 2011 and February 7, 2012 OWCP decisions denying appellant's traumatic injury claim. It determined that the medical evidence was insufficient to establish that appellant's right ankle condition was causally related to a May 10, 2011 employment incident.³ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

On November 26, 2012 appellant requested reconsideration of the February 7, 2012 OWCP decision. She noted that prior to the May 10, 2011 employment incident she was being treated for her left foot and ankle as a result of an April 2007 work-related injury. Appellant related that on April 18, 2007 she was removing a pack of 100 blank books from a box when a passport box fell on her left foot. She informed her supervisor but he did not give her any papers to file with OWCP. Appellant then sprained her right ankle on the job which made her left ankle worse. She reported that a May 16, 2011 magnetic resonance imaging (MRI) scan examination revealed both swollen ankles due to the job injury. Appellant stated that she continued to be treated by Dr. Sanjiv Bansal, a Board-certified orthopedic surgeon, and Dr. Indu Garg, Board-certified in physical medicine and rehabilitation, and that OWCP could request papers from them for new evidence.

In a handwritten November 29, 2012 report, Dr. Garg stated that appellant had been her patient since May 31, 2011 for a right ankle injury and noted that she subsequently developed

³ Docket No. 12-74 (issued September 14, 2012).

pain in her left ankle. She noted that appellant needed to continue physical therapy. Dr. Garg also included various treatment notes indicating that appellant underwent physical therapy from November 29, 2012 to June 27, 2013.

In a December 14, 2012 report, Dr. Bansal indicated that he treated appellant since July 20, 2011 for a right ankle injury but noted that she had also received treatment for her left foot. He stated that she continued to have ongoing problems to both ankles and required ongoing treatment. Upon examination, Dr. Bansal observed signs of chronic instability, pain, discomfort and osteochondral defect of the right ankle joint. He reported that it was unclear what the issues were but he recommended an MRI scan of the right ankle.

In a January 23, 2013 return to work note, Dr. Bansal stated that appellant could return to full duty on January 28, 2013.

In a January 26, 2013 MRI scan of the right ankle, Dr. Harold M. Tice, a Board-certified diagnostic radiologist, related appellant's complaints of right ankle pain, swelling, tenderness and difficulty walking. He observed loss of definition and thickening of the anterior talofibular ligament compatible with strain or partial tear. Dr. Tice reported that anterior talofibular ligament configuration was suggestive of strain or partial tear and that fluid associated with the electric double layered, peroneus and posterior tibial tendons were compatible with tenosynovitis.

In a March 22, 2013 note, Dr. Bansal stated that appellant was seen in his office and her next appointment was on May 3, 2013.

In a March 26, 2013 letter, appellant informed OWCP that she was sending new evidence to show that she was still being treated by physicians. She stated that she did not receive any salary payments from June 9 to September 11, 2011. Appellant requested that OWCP contact her regarding any additional information that was needed and to contact her physicians for any additional information or questions.

In an April 11, 2013 report, Dr. Bansal stated that appellant continued to have difficulty with her right knee work-related problem and that the problem began on May 10, 2011. He noted that an MRI scan of the right ankle revealed that she had anterior talofibular ligament tear and tenosynovitis in the peroneal tendons. Dr. Bansal reported that an MRI scan of the left ankle also demonstrated tendinosis of the Achilles tendon and a sprain of the anterior and posterior talofibular ligament. He stated that both of appellant's ankles essentially had sprains due to an injury she sustained on May 10, 2011 and that these conditions developed into chronic issues that continue to be a problem. Dr. Bansal noted that she did not have any other injuries prior to that.

In a May 9, 2013 report, Dr. Garg related that on May 10, 2011 appellant sustained an injury to her right ankle at her job. She reported that an MRI scan of the right ankle was consistent with tear of the ligament and that an orthopedic recommended that she start physical therapy. Dr. Garg stated that appellant was now complaining of consequential injury to her left ankle and low back, mainly on the right side and hip, because of the way she walked. She noted that this was definitely a consequential injury. Upon examination, Dr. Garg observed small swelling present with pain on the right ankle. Range of motion was full and muscle strength was

good. Examination of the lumbosacral spine revealed tenderness on the right paraspinal muscles. Range of motion was limited in forward flexion. Straight leg raise testing was negative but painful. Dr. Garg opined that appellant had a right ankle injury with ligament tear and consequential injury to the low back and right hip.

On July 9, 2013 appellant submitted a request for disability compensation dated May 10 to September 11, 2011. She resubmitted Dr. Garg's medical reports.

In a decision dated August 13, 2013, OWCP denied modification of the September 14, 2012 denial decision finding that the medical evidence was insufficient to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.

On August 20, 2013 appellant submitted a request for reconsideration. She resubmitted OWCP's prior decisions.

By decision dated September 11, 2013, OWCP denied appellant's request for reconsideration finding that appellant did not submit any evidence to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹² The weight of the 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.¹³

ANALYSIS -- ISSUE 1

Appellant alleges that on May 10, 2011 she sustained an injury to her right ankle when she stepped on a black binder clip. In decisions dated June 30 and October 12, 2011 and February 7, 2012, OWCP denied her claim finding insufficient medical evidence to establish that her right ankle condition was causally related to the accepted May 10, 2011 incident. By decision dated September 14, 2012, the Board affirmed its decisions denying appellant's traumatic injury claim.

Following the Board's September 14, 2012 decision, appellant requested reconsideration of the February 7, 2012 OWCP decision and submitted additional medical evidence. In a decision dated August 13, 2013, OWCP denied her claim finding insufficient medical evidence to establish that her right ankle condition was causally related to the accepted May 10, 2011 incident. The Board finds that appellant did not submit sufficient medical evidence to establish that her right ankle condition resulted from the May 10, 2011 incident.

Appellant submitted various medical reports by Dr. Garg. In a November 29, 2012 report, Dr. Garg related that she treated appellant since May 31, 2011 for a right ankle injury and noted that appellant subsequently developed pain in her left ankle. In a May 9, 2013 report, she stated that appellant sustained a work-related right ankle injury on May 10, 2011. Dr. Garg reported that an MRI scan of the right ankle was consistent with tear of the ligament. Upon examination, she observed small swelling present with pain on the right ankle and full range of motion. Dr. Garg reported that appellant was now complaining of consequential injury to her left ankle and low back. She opined that appellant had a right ankle injury with ligament tear and consequential injury to the low back and right hip.

The Board notes that Dr. Garg diagnosed a right ankle tear and noted a date of injury of May 10, 2011. Although Dr. Garg mentioned the date May 10, 2011 she does not describe the

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

employment incident at all or mention how the specific events of May 10, 2011 caused or contributed to her right ankle condition. The Board has found that medical opinion not based and not fortified by medical rationale is of diminished probative value.¹⁴ Without medical rationale explaining how the specific events of May 10, 2011 supported Dr. Garg opinion on causal relationship, the Board finds that her reports are insufficient to establish appellant's claim.

In December 14, 2012 and April 11, 2013 reports, Dr. Bansal stated that he treated appellant since July 20, 2011 for a right ankle problem that began on May 10, 2011. He noted that she also received treatment for a left ankle condition. Physical examination revealed signs of chronic instability, pain, discomfort and osteochondral defect of the right ankle joint. Dr. Bansal reviewed appellant's diagnostic reports and stated that both of her ankles essentially had sprains due to a May 10, 2011 employment injury. Although he concludes that appellant's ankle sprains were due to the May 10, 2011 employment injury, he does not describe the incident or offer any rationalized medical explanation of how the May 10, 2011 incident caused or contributed to her right ankle condition. The Board has held that medical evidence that states a conclusion but does not provide any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Dr. Bansal attributed appellant's ankle conditions to the May 10, 2011 incident but he did not specifically describe how stepping on a binder clip caused her right ankle condition.¹⁶ His reports, therefore, are also insufficient to establish her claim.

The January 26, 2013 MRI scan report also fails to establish appellant's claim as Dr. Tice provides a diagnosis and examination findings but he offers no opinion on the cause of her right ankle condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Likewise, the various returns to work slips and treatment notes are also insufficient to establish appellant's claim as they provide no examination findings or diagnosis but merely indicate that she received medical treatment on those dates.

On appeal, appellant reiterated that on May 10, 2011 she stepped on a binder clip at work and aggravated her right ankle and reviewed her medical treatment. She stated that she was unable to work and that her ankles continued to bother her as a result of the injury. An employee's belief of causal relation, however, does not establish that fact.¹⁸ The issue of causal relationship is a medical question that must be established by probative medical opinion from a

¹⁴ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁵ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁶ *John W. Montoya*, 54 ECAB 306 (2003) (rationalized medical opinion evidence must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition).

¹⁷ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁸ *See Patricia J. Glenn*, 53 ECAB 159 (2001).

physician.¹⁹ Because appellant has not provided such medical evidence, the Board finds that she did not meet her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.²⁰ OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district Office.²¹

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by it; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²²

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.²³ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁴ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁵

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by it; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

¹⁹ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

²⁰ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

²¹ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

²² *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²³ *Id.* at § 10.607(a).

²⁴ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁵ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

By decision dated August 13, 2013, OWCP denied modification of the February 7, 2012 denial decision finding that the medical evidence failed to establish that appellant's right ankle condition was causally related to the May 10, 2011 employment incident. In an appeal request form postmarked August 20, 2013 and received by OWCP on August 23, 2013, appellant requested reconsideration. She submitted OWCP's previous denial decisions.

The Board notes that submission of OWCP's denial decisions did not require reopening her case for merit review. Appellant did not submit any new medical evidence or statements along with her reconsideration request to support her claim. She did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously considered by OWCP. Because appellant did not meet any of the necessary requirements under 20 C.F.R. § 10.606, she is not entitled to further merit review.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right ankle condition was causally related to the May 10, 2011 employment incident. The Board also finds that OWCP properly denied appellant's August 20, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 11 and August 13, 2013 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2014
Washington, DC

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

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

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