

FACTUAL HISTORY

On March 7, 2013 appellant, then a 53-year-old city carrier, submitted two traumatic injury claims pertaining to the same alleged injury of December 6, 2010.² In the first claim, she stated that on the morning of December 6, 2010 she sustained abrasions and scratches on her knees when she fell after turning to enter a yard on Mann Street. The employing establishment contended that the alleged injury did not occur in the performance of duty because appellant did not report the injury until months after the incident occurred. In the second claim form, appellant explained that on December 6, 2010 she sustained injuries to her hands and knees when she tripped on a water hose in a yard on Moore Street and fell down. She documented what happened and informed Postmaster Paul Frazier, but she was never told to file a claim or otherwise report the alleged injury.

In a March 14, 2013 letter, the employing establishment controverted appellant's claim contending it lacked reliable, probative or substantial value that an injury occurred in the performance of duty. It stated that she did not provide any documentation to substantiate that the accidents or injuries ever occurred. The employing establishment noted that it received three different traumatic injury claims from appellant describing different injuries of June 22, 2009 and December 6, 2010.

In a statement, Mr. Frazier, appellant's postmaster, advised that on November 5, 2010 appellant only had 11 minutes on her route when she clocked out, stating she had foot problems.

In an October 25, 2010 hospital discharge instruction, Dr. Robert Breving, a Board-certified surgeon, reported that appellant was diagnosed and treated in emergency medical care. The instructions included fact sheets on plantar fasciitis and celecoxib, an anti-inflammatory medication.

By letter dated April 23, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional evidence to establish that the December 6, 2010 incident occurred at the time, place and in the manner alleged and that she sustained a diagnosed condition as a result of the alleged incident. Appellant did not respond.

In a decision dated May 31, 2013, OWCP denied appellant's claim. It found that the factual evidence was insufficient to establish that the December 6, 2010 slip and falls occurred at the time, place or in the manner alleged.

In a letter received by OWCP on May 29, 2014, appellant's counsel requested reconsideration.

In a May 22, 2013 report, Dr. Joseph M. LaCava, a podiatrist, related appellant's complaints of painful bilateral heel pain. He noted that she worked as a postal carrier. Dr. LaCava reviewed appellant's history and conducted an examination. He reported that plantar fascia of both feet exhibited mild, moderate pain to palpation. Dr. LaCava also observed

² Appellant had also filed a previous traumatic injury claim for a June 22, 2009 employment incident (File No. xxxxxx289).

excessive pronation of both feet and deformity of the ankle dorsiflexion. He diagnosed bilateral plantar fasciitis, heel pain syndrome and calcaneal exostosis.

In a May 22, 2014 report, Dr. Michael Shane Higginbotham, a Board-certified family practitioner, stated that appellant was a patient at his clinic. He reported that she suffered from neuropathy and plantar fasciitis, which could be made worse by excessive walking or standing on her feet.

By decision dated June 19, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that the evidence submitted was irrelevant and immaterial to the issue in the case.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ OWCP regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district office.⁴

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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be submitted within one year of the date of OWCP decision for which review is sought.⁶ 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.⁷ 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.⁸

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

⁴ 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).

⁵ *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).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

ANALYSIS

Following the May 31, 2013 decision denying her claim, appellant submitted a request for reconsideration that was received by OWCP on May 29, 2014. The denial decision determined that she submitted insufficient factual evidence to establish that the December 6, 2010 incidents occurred at the time, place or in the manner alleged. OWCP noted that appellant failed to explain why she waited over two years to file a claim and why she did not seek immediate medical attention after the alleged falls at work.

With her reconsideration request, appellant submitted medical reports from Drs. LaCava and Higginbotham regarding treatment for her bilateral heel pain, plantar fasciitis and neuropathy. These reports, however, are not new or relevant evidence to the underlying factual issue regarding whether the December 6, 2010 employment incidents occurred as appellant alleged. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Accordingly, these medical reports are insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

On appeal appellant's counsel contends generally that OWCP decision was contrary to law and fact. The Board notes that appellant has not provided any evidence to establish that OWCP improperly denied further merit review of this case. Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(2). She did not submit any evidence with her request for reconsideration to establish that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

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 her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 29, 2014 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

⁹ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2014 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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