

injury causally related to foot patrolling the employing establishment for an entire shift due to an incident at Thompson Ridge. She first became aware of her condition and of its relationship to her employment on June 5, 2013.

By letter dated October 29, 2013, OWCP advised appellant of the deficiencies in her claim. It stated that it had not received any documentation other than her claim form and asked that she submit a response to its questionnaire in order to substantiate the factual elements of her claim, including a clarification as to whether she was claiming an occupational disease or a traumatic injury. OWCP also asked appellant to submit medical evidence in support of her claim. In a letter of the same date, it asked the employing establishment to respond to its inquiries as to her duties.

In a report dated August 29, 2013, Dr. Daniel A. Romanelli, a Board-certified orthopedic surgeon, stated that appellant had “foot pain mostly over the navicular.” On examination, he noted a flat feet deformity, tenderness over the inside portion of her right foot over the navicular, and tenderness over the lateral proximal fifth metatarsal. An x-ray revealed mild degenerative arthrosis and mild patellar tilt, with no obvious fractures.

On September 5, 2013 Dr. Romanelli stated that appellant presented to him with a possible navicular injury. He noted that he had ordered a magnetic resonance imaging (MRI) scan of her right foot, but it had not included the calcaneus and that as such he was going to order another MRI scan .

In a report dated September 10, 2013, Dr. Romanelli noted that an MRI scan revealed that appellant had an osteochondritis dissecans (OCD) lesion of her talus, medial talar dome, and an effusion of the right ankle.

In a radiological report dated October 3, 2013, Dr. Romanelli noted a normal x-ray of appellant’s right ankle.

On November 21, 2013 Dr. Romanelli stated that appellant felt better in her own boot, with pain continuing in the plantar arch right over the insertion into the heel with point tenderness.

Appellant also submitted records from physical therapists dated between September 10 and December 4, 2013.

By decision dated December 16, 2013, OWCP denied appellant’s claim for compensation. It noted that she had not submitted any explanation as to how the performance of any work activities caused or aggravated her claimed condition, and that as such, she had not met her burden of proof to establish that any employment factors had actually occurred.

In a report dated December 17, 2013, Dr. Romanelli noted that appellant complained of mediolateral ankle pain and knee pain with popping. He stated that she developed plantar fasciitis, which improved over time. Dr. Romanelli ordered an MRI scan of appellant’s ankle.

On January 13, 2014 appellant requested reconsideration of OWCP’s December 16, 2013 decision.

In a record of a telephone conversation dated January 16, 2014, a claims examiner spoke to appellant regarding her case and informed her that her claim was for a traumatic injury, rather than an occupational disease, based on her description that her injury was caused by a specific incident.

On September 23, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2013, she was on her feet for her entire shift in mountainous terrain, felt a pop, and continued to “walk it off.” She stated that, as a result of this incident, she developed right ankle pain and swelling.

On March 21, 2014 OWCP reviewed the merits of appellant’s claim and denied her claim based upon insufficient medical evidence. It noted that she had provided sufficient factual information to establish that the traumatic incident of June 5, 2013 occurred as described. However, OWCP further noted that appellant had not submitted evidence from a physician containing a description of the mechanism of her injury and an opinion on the causal relationship between the traumatic incident and her diagnosed condition.

By letter dated April 3, 2014, Dr. Romanelli stated that, sometime before August 29, 2013, appellant was working as a forestry employee in mountainous terrain, got out of her truck, stepped backward, and rolled her ankle and foot. He noted that she initially presented to him with foot pain, which he thought might be a stress navicular fracture. On examination of an MRI scan, Dr. Romanelli discovered that appellant had an OCD lesion of the medial talus, which “goes along with an inversion type injury,” as well as a syndesmosis injury. He stated, “So her mechanism of injury was stepping backward out of a truck, twisted her ankle and foot. [Appellant] walks quite a bit on the job on various mountainous terrain, and I believe that the twisting injury caused the medial talar dome injury that has gone on to heal and also the syndesmosis injury which has apparently gone on to heal and is asymptomatic, so there is a causal relationship.”

On April 8, 2014 appellant requested reconsideration of OWCP’s March 21, 2014 decision.

By decision dated May 21, 2014, OWCP reviewed the merits of appellant’s claim and affirmed its prior decision of March 21, 2014. It noted that Dr. Romanelli’s letter of April 3, 2014 described a mechanism of injury that had not been alleged by appellant to have caused her condition, and that as such, Dr. Romanelli’s opinion on causal relationship was not based on identified factors of her federal employment.

In an e-mail dated June 3, 2014, appellant stated, “I accepted a fire assignment in June, 2013. While on a fire assignment working in mountainous terrain, was working, basically got off the truck, stepped backward, and rolled my right ankle and foot. The pain showed up in my foot and ankle.” Appellant also described how she found the workers’ compensation process difficult.

On June 24, 2014 appellant requested reconsideration of OWCP’s May 21, 2014 decision.

By decision dated August 6, 2014, OWCP denied appellant's request for reconsideration without reviewing the merits of her claim. It stated that her letter neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical

² *Id.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁴ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.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

ANALYSIS -- ISSUE 1

OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that she had established that the traumatic event of June 5, 2013 occurred as alleged. Appellant stated that on June 5, 2013 she was on her feet for her entire shift in mountainous terrain, felt a pop, and continued to "walk it off." The Board finds that she has been diagnosed with a medical condition in connection with this incident, as she alleged a right foot condition and Dr. Romanelli diagnosed her with an OCD lesion of her talus, medial talar dome, and an effusion of the right ankle. However, the question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹³ Appellant has not submitted rationalized, probative medical evidence to establish that the June 5, 2013 employment incident caused or aggravated her claimed conditions.

In support of her claim, appellant submitted reports from Dr. Romanelli. In reports dated from August 29 and December 17, 2013, Dr. Romanelli provided diagnoses for her right foot condition and charted her progress. However, he did not provide an opinion as to the cause of appellant's condition in these reports. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ As such, they do not suffice to establish appellant's claim for compensation.

In a letter dated April 3, 2014, Dr. Romanelli stated that sometime before August 29, 2013 appellant was working as a forestry employee in mountainous terrain, got out of her truck, stepped backward, and rolled her ankle and foot. On examination of an MRI scan, he discovered that she had an OCD lesion of the medial talus, which "goes along with an inversion type injury," as well as a syndesmosis injury. Dr. Romanelli stated, "So [appellant's] mechanism of injury was stepping backward out of a truck, twisted her ankle and foot. [Appellant] walks quite a bit on the job on various mountainous terrain, and I believe that the twisting injury caused the medial talar dome injury that has gone on to heal and also the syndesmosis injury which has apparently gone on to heal and is asymptomatic, so there is a causal relationship." He offered an opinion as to the causal relationship between her conditions and a work-related event; however, the history of injury given by him does not match the history of injury as reported by her. The mechanism of injury is not described as appellant walking all day in mountainous terrain, but

¹¹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹² *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

instead as stepping backward out of a truck. Dr. Romanelli does not offer the particular date of June 5, 2013 as the date of injury, but instead merely notes that it occurred before August 29, 2013. Medical conclusions based on inaccurate or incomplete histories are of little probative value.¹⁵ While the event described by Dr. Romanelli may be the basis for filing of a separate traumatic injury claim, it does not suffice to establish this claim, which is for a traumatic injury that occurred on June 5, 2013 as a result of appellant being on her feet for her entire shift in mountainous terrain, feeling a pop, and continuing to “walk it off.” Without an accurate history corresponding to the traumatic event on which this claim is based, Dr. Romanelli’s report of April 3, 2013 is insufficient to establish appellant’s claim.

As such, there is insufficient rationalized evidence of record supporting that appellant’s right foot condition was related to a traumatic injury at work on June 5, 2013. Appellant failed to provide a medical report from a physician containing an opinion on causal relationship, an accurate history of injury, and rationale explaining the nature of the relationship between the diagnosed condition and the traumatic event of June 5, 2013. Accordingly, she did not establish that she sustained a right foot injury in the performance of duty on June 5, 2013, and OWCP properly denied her claim for compensation.

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

To require OWCP to reopen a case for merit review under section 8128(a), OWCP’s 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 argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶ Section 10.608(b) of OWCP’s 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.¹⁷

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹⁸ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a

¹⁵ *James A. Wyrick*, 31 ECAB 1805, 1807 (1980) (finding that a physician’s report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹⁶ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁷ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

¹⁸ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

case.¹⁹ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²⁰

ANALYSIS -- ISSUE 2

OWCP issued a May 21, 2014 merit decision denying appellant's claim for compensation because she did not submit sufficient medical evidence to establish a causal relationship between the traumatic incident of June 5, 2013 and her diagnosed conditions. On June 24, 2014 appellant requested reconsideration of this decision.

The issue presented on appeal of OWCP's August 6, 2014 decision is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her June 24, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The relevant issue in this case is whether appellant has submitted sufficient medical evidence establishing that a traumatic injury on June 5, 2013 caused or aggravated her diagnosed right foot conditions. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. In a statement dated June 3, 2014, appellant noted, "I accepted a fire assignment in June, 2013. While on a fire assignment working in mountainous terrain, was working, basically got off the truck, stepped backward and rolled my right ankle and foot. The pain showed up in my foot and ankle." While this statement was not previously of record, it is irrelevant to the grounds upon which OWCP denied her claim. Appellant's claim under file number xxxxxx459 deals with a traumatic incident on June 5, 2013 in which the described mechanism of injury was being on her feet for her entire shift in mountainous terrain, feeling a pop, and continuing to "walk it off." Her statement, submitted upon reconsideration, describes a separate traumatic event. While this event may be the basis for a separate traumatic injury claim, it is not relevant to the current claim. As such, appellant's June 3, 2014 statement was insufficient to require a merit review of her claim.

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.

¹⁹ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

²⁰ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a traumatic injury in the performance of duty on June 5, 2013. The Board further finds that OWCP properly denied her request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 6 and May 21, 2014 are affirmed.

Issued: February 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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