United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 15-0821**
	)	**Issued: July 2, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2015 appellant filed a timely appeal from a November 5, 2014 merit decision and a February 23, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 right Achilles tendinopathy and minimal interstitial laminar tear as a result of factors of his federal employment; 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 July 10, 2014 appellant, then a 23-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a right Achilles strain as a result of his federal employment duties. He first became aware of his condition and of its relationship to his employment on June 25, 2014 when he was on a walking route and began to feel pain in his lower leg area. After approximately 20 minutes, appellant was unable to walk due to increased pain. He sought emergency room (ER) treatment that same date and was informed he strained his right Achilles.

By letter dated July 16, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim. It provided a questionnaire for completion and advised him to clarify whether he was claiming an occupational disease or traumatic injury based on the definitions provided. Appellant was informed of the medical and factual evidence needed and was directed to submit it within 30 days.

In a July 24, 2014 narrative statement, appellant responded to OWCP's questionnaire stating that he was filing an occupational disease claim. He reported that his employment duties consisted of constantly walking up and down for five to six hours a day. Appellant's physician informed appellant that the constant walking on the job caused his Achilles injury. Appellant further stated that he did not engage in hobbies or activities which would affect his Achilles.

In a June 25, 2014 ER report, Phillip Stiles, a physician assistant (PA-C) stated that appellant presented to the ER with complaints of pain which began approximately four hours ago in the right lower extremity while walking on his postal service mail route. PA Stiles noted risk factors of repetitive stress of walking several miles per day for appellant's employment as a mail carrier. He diagnosed right Achilles tendinitis and checked the box marked "Yes" when asked if the condition was work related.

In a July 2, 2014 diagnostic report, Dr. Glenn Schultes, a Board-certified diagnostic radiologist, reported that an x-ray of the right ankle revealed minimal thickening of the Achilles with suggestion of mild edema, advising a magnetic resonance imaging (MRI) scan for evaluation of the Achilles tendon for tendinopathy or tear.

In a July 2, 2014 medical report, Dr. Loring J. Stead, a Doctor of Podiatric Medicine, reported that appellant was recently walking on his postal route and started having an increased ache on the back part of the right heel that developed into pain which caused him to limp. Appellant could not recall one particular change in shoe gear, activity, or injury that caused this to occur. It acutely started on his route. Upon physical examination and review of diagnostic studies, Dr. Stead diagnosed Achilles tendinitis with injury, right ankle with possible tear. He restricted appellant from work and recommended an MRI scan of the right ankle. In a Medical Report to Employer Form that same date, Dr. Stead checked the box marked "Yes" when asked if the condition was work related.

In a July 14, 2014 diagnostic report, Dr. Schultes reported that an MRI scan of the right ankle revealed mild distal Achilles tendinopathy and minimal interstitial/intralaminar tear of the distal Achilles tendon, but no significant partial tear or full thickness tear.

In a July 16, 2014 medical report, Dr. Stead reported that appellant was injured at work on June 25, 2014. He reviewed the July 14, 2014 MRI scan of the right ankle and diagnosed right Achilles tendinopathy with mild interstitial tear. In a Medical Report to Employer Form of that same date, Dr. Stead checked the box marked "Yes" when asked if the condition was work related.

In a July 16, 2014 medical report, Dr. David Lowe, Board-certified in internal medicine, reported that appellant injured his Achilles tendon while at work on June 25, 2014. He diagnosed right Achilles tendon rupture and noted a scheduled surgical repair on July 18, 2014.

In medical reports dated August 27 and October 8, 2014, Dr. Stead reported that appellant was injured at work on June 25, 2014 and was treated for Achilles tendinitis. He stated that the Achilles tendinopathy with slight interstitial tear had improved postoperatively, recommended physical therapy, and provided work restrictions.

Physical therapy treatment notes dated July 17 to September 5, 2014 were also submitted.

By decision dated October 28, 2014, OWCP denied appellant's claim finding that the medical evidence failed to establish that his right distal Achilles tendinopathy and minimal laminal tear were causally related to his accepted federal employment duties.[2]

On January 30, 2015 appellant requested reconsideration. He argued that there was a clear relationship between his Achilles injury and his work-related duties as he had no symptoms prior to his employment. Appellant further argued that his physicians also believed his injury was work related.

In support of his claim, appellant resubmitted the medical reports of Drs. Schultes, Stead, and Lowe previously of record. He also resubmitted PA-C Stiles June 25, 2014 ER report, a July 17, 2014 physical therapy treatment note, and prior referral and request for authorization forms.

By decision dated February 23, 2015, 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 proof to establish 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 is causally related to the

[2] The Board notes that while OWCP's decision was dated October 28, 2014, OWCP's subsequent February 23, 2015 nonmerit decision references the date of the merit decision as November 5, 2014.

employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[4]

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.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

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 a causal relationship.[7] The opinion of the physician 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.[8]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant engaged in repetitive walking during his employment duties as a city carrier. It denied his claim as the evidence submitted failed to establish a causal relationship between repetitive walking and his diagnosed right Achilles tendinopathy and minimal interstitial laminar tear. The Board finds on appeal that the medical evidence of record is insufficient to establish Achilles tendinopathy and a minimal interstitial laminar tear causally related to factors of his federal employment as a city carrier.

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

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

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

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

In medical reports dated July 2 to October 8, 2014, Dr. Stead provided physical examination findings, reviewed diagnostic tests, and diagnosed Achilles tendinopathy and minimal interstitial laminar tear. He reported that appellant was injured at work on June 25, 2014. In Medical Report to Employer Forms, Dr. Stead diagnosed right Achilles tendinopathy with mild interstitial tear and checked the box marked "Yes" when asked if the condition was work related.

The Board finds that the opinion of Dr. Stead is not well rationalized. Dr. Stead failed to provide a detailed medical history or description of appellant's federal employment duties as a city carrier which may have caused him injury. While his July 2, 2014 report noted that appellant did not recall one particular change in shoe gear, activity, or injury that caused his pain, his subsequent reports identify June 25, 2014 as the specific date of injury. Thus, it appears that Dr. Stead is attributing appellant's Achilles injury to a traumatic incident from a single occurrence within a single workday on June 25, 2014, rather than an occupational injury produced by his work environment over a period longer than a single workday or shift as alleged by appellant in this claim.[9]

Though Dr. Stead checked the box marked "yes" when asked if he believed that appellant's condition was caused or aggravated by the employment incident, the Board has held that a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[10] His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how repetitive walking would have caused or aggravated appellant's right Achilles tendinopathy or mild interstitial tear.[11] Without explaining how appellant's employment duties caused or contributed to the diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.[12] Medical reports without rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[13]

Dr. Schultes' July 2 and 14, 2014 reports interpreted diagnostic imaging studies, but provided no opinion on the cause of appellant's injury.[14] The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[15] Dr. Lowe's July 16, 2014 report noted that appellant injured his

[9] 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).

[10] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[11] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[12] *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[13] *Id.*

[14] *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

[15] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Achilles tendon while at work on June 25, 2014, but he did not profess sufficient knowledge of appellant's specific job duties or provide a rationalized explanation as to the cause of his injury. Moreover, his report does not provide support for an occupational disease claim as it appears that he is attributing appellant's condition to a traumatic injury. Thus, Dr. Lowe's opinion is of limited probative value and insufficient to meet appellant's burden of proof.[16] The physical therapy and physician assistant reports are lacking in probative value as they were not signed by a physician. Registered nurses, physical therapists, and physicians assistant, are not physicians as defined under FECA.[17]

The record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a city carrier and his diagnosed right Achilles conditions. 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 the 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.[18] 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.[19]

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 30, 2015 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

[16] *Supra* note 12.

[17] 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

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

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

legal argument. Appellant argued that his injury was employment related, but the underlying issue in this case was whether he sustained right Achilles tendinopathy and mild interstitial tear causally related to his federal employment duties as a city carrier. That is a medical issue which must be addressed by relevant medical evidence.[20] Appellant, however, failed to submit new and relevant medical evidence in support of his claim.

The only evidence submitted were medical reports which had been previously considered by OWCP in its November 5, 2014 merit decision. As the reports repeat evidence already in the case record, they do not constitute relevant and pertinent new evidence. Material which is duplicative does not constitute a basis for reopening a case.[21]

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 new 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 his right Achilles tendinopathy and minimal interstitial laminar tear are causally related to factors of his federal employment as a city carrier. OWCP properly denied his request for reconsideration without a merit review.

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

[21] *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated February 23, 2015 and November 5, 2014 are affirmed.

Issued: July 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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