



## **FACTUAL HISTORY**

On October 6, 2014 appellant filed a claim on August 21, 2014 alleging that she sustained a recurrence of disability due to her May 20, 2013 employment injury under OWCP File No. xxxxxx102.<sup>3</sup> She stopped work on September 28, 2014. Appellant stated that after returning to work following her initial employment injury of ankle fracture she continued to experience mild pain in her left foot. She was limping and used an ankle sock for support. Appellant reported additional symptoms including a burning sensation in her left foot and right arm.

Dr. Michael Haenick, a Board-certified physiatrist, examined appellant on September 26, 2014 and diagnosed right carpal tunnel syndrome and right medial epicondylitis.

Appellant submitted an October 30, 2014 narrative statement in which she described her job duties as a mail clerk beginning January 2014. These duties included pushing mail, loading machines, extracting mail from machines, and removing full trays of mail. Appellant stated: "The pushing, lifting, and extraction of the mail contributed to my carpal tunnel syndrome of my right elbow. The pushing and lifting the of the mail aggravated by left ankle and feet and caused a recurrence of severe pain and burning due to my prior injury dated May 20, 2013."

October 27, 2014 x-rays of appellant's left foot revealed no fracture or dislocation, but showed mild degenerative changes, and mild osteopenia.

OWCP informed appellant, in a letter dated December 8, 2014, that her October 6, 2014 claim would be developed as an occupational disease rather than a recurrence of disability of her May 20, 2013 employment injury as she implicated additional employment duties.

Dr. Zeeshan S. Husain, a podiatrist, completed a report on December 12, 2014 and noted appellant's history of tripping on May 20, 2013 and a diagnosis of fracture of the left talus. Appellant informed him that she was currently experiencing burning pain over the anterior aspect of her left ankle, midfoot, and sinus tarsi. She also reported low back pain. Dr. Husain noted that appellant was a mail distribution clerk. He diagnosed midfoot arthritis on the left and sinus tarsitis.

Dr. Haenick completed a report on November 18, 2014 and noted appellant's fall with persistent pain in her left foot. He also reported her repetitive work of pushing, pulling, and sorting mail. Dr. Haenick diagnosed right mild carpal tunnel syndrome, right medial epicondylitis, and left foot pain with a history of fracture, ligamentous tears with post-traumatic arthritis. He provided work restrictions. Dr. Haenick stated, "I do feel with [appellant's] history of a fall with the fracture at work as well as change to job with persistent repetitive motion that these are directly related to her work injuries."

In a statement dated December 13, 2014, appellant noted that on August 21, 2014 she felt pain and burning on the top of the left foot which worsened with her work activities. She listed

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<sup>3</sup> OWCP accepted appellant's claim under File No. xxxxxx102 for left ankle sprain, left talus bone fracture, left talofibular ligament tear, and contusion of the right shoulder and upper arm.

her duties of pushing mail in machines weighing up to 500 pounds, grasping, lifting, and pushing as well as sweeping mail in a machine. Appellant stated, “When pushing or lifting the mail, the weight of the mail brings pain and burning due to my development of arthritis of the feet. There is also a weakness to my feet which affects my walking at times.”

By decision dated January 13, 2015, OWCP denied appellant’s claim because she had failed to submit medical evidence establishing a causal relationship between her new diagnosed foot condition and her employment duties. It found that neither Dr. Haenick nor Dr. Husain provided medical opinion evidence that her current foot condition was due to her implicated employment duties.

In a form dated February 27, 2015 and received by OWCP on March 9, 2015, appellant requested a review of the written record from OWCP’s Branch of Hearings and Review. This request was postmarked March 2, 2015.

By decision dated March 31, 2015, OWCP’s Branch of Hearings and Review denied appellant’s request for a review of the written record as it was not timely. The Branch of Hearings and Review stated that the request was postmarked on March 2, 2015 more than 30 days after the January 13, 2015 OWCP decision. The Branch of Hearings and Review stated that, in its discretion, it had considered appellant’s request and determined that the issue could be equally well addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup>

OWCP regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>5</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Id.* at § 10.5(q).

The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

As appellant attributed her condition to her work duties in her position as a mail clerk which began in January 2014, the Board finds that OWCP adjudicated her recurrence claim as a new occupational disease claim.<sup>7</sup> In her October 30, 2014 narrative statement, she indicated that her foot pain was related to her work duties as a mail clerk beginning in January 2014.

Appellant has provided medical evidence of diagnosed foot conditions, foot arthritis and sinus tarsitis, and has provided a factual statement identifying the job duties which she felt caused or contributed to this condition including pushing and lifting of the mail as a mail clerk beginning in January 2014. However, the Board finds that she has not submitted the necessary medical opinion evidence to establish a causal relationship between these diagnosed conditions and her implicated job duties.

Appellant submitted medical evidence from Dr. Husain dated December 12, 2014, which provided a history of tripping on May 20, 2013 and a diagnosis of fracture of the left talus at that time. She reported burning pain in her left ankle and low back pain. Dr. Husain stated that appellant worked as a mail distribution clerk and diagnosed midfoot arthritis on the left and sinus tarsitis. The Board finds that while he provided a diagnosis and brief statement that she worked as a mail distribution clerk, he did not provide the necessary medical opinion to establish the cause connection between the condition and employment.

Appellant also submitted reports from Dr. Haenick. Dr. Haenick listed her work duties as repetitive pushing, pulling, and sorting mail. He diagnosed left foot pain with a history of fracture, ligamentous tears with post-traumatic arthritis. Dr. Haenick stated, "I do feel with her history of a fall with the fracture at work as well as change to job with persistent repetitive motion that these are directly related to her work injuries." While he provided an opinion that appellant's work duties caused or contributed to her post-traumatic arthritis, he did not provide any medical rationale in support of his statement of causal relationship.

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 8124(b)(1) of FECA provides that a claimant is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.<sup>8</sup> Section 10.615 of OWCP's federal regulations implementing

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<sup>6</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>7</sup> *A.P.*, Docket No. 11-1802 (issued April 10, 2012).

<sup>8</sup> 5 U.S.C. § 8124(b)(1).

this section of FECA, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>9</sup> Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of FECA and its implementing regulations. OWCP regulations and Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carrier's date marking) of the date of the decision for which an oral hearing or review of the written record is sought.

### **ANALYSIS -- ISSUE 2**

Appellant filed a request for review of the written record which was dated February 27, 2015, postmarked on March 2, 2015 and received by OWCP's Branch of Hearings and Review on March 9, 2015. As the request was not made within 30 days after OWCP issued its January 13, 2015 decision, it was not timely filed and she was not entitled to a review of the written record as a matter of right.

OWCP retains the discretionary power to grant a review of the written record when a claimant fails to request a review within the allotted time. In this case, it exercised its discretion in its March 31, 2015 decision by finding that the issue raised by appellant's request could be addressed if she requested reconsideration and submitted additional evidence. The Board finds that this denial of her request for review of the written record is a proper exercise of OWCP's authority.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary medical evidence to establish an injury causally related to factors of her federal employment. The Board further finds that OWCP's Branch of Hearings and Review properly denied her request for a review of the written record as untimely filed.

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<sup>9</sup> 20 C.F.R. § 10.615.

<sup>10</sup> R.S., Docket No. 15-564 (issued April 20, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** March 31 and January 13, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 22, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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