

FACTUAL HISTORY

On September 28, 2013 appellant, a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a bilateral foot injury on September 14, 2013 as a result of walking more than eight hours continuously.

By decision dated November 15, 2013, OWCP denied appellant's claim as the medical evidence was insufficient to establish a causal relationship between her foot condition and the September 14, 2013 employment incident. Appellant requested reconsideration and, in a decision dated January 23, 2014, OWCP denied modification of its prior decision.

On May 3, 2014 appellant again requested reconsideration of the merits of her claim. By decision dated May 15, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she had not submitted pertinent new and relevant evidence and had not shown that it erroneously applied or interpreted a point of law not previously considered by OWCP.

On July 28, 2014 appellant again requested reconsideration and submitted reports dated April 15 and 28, and June 19, 2014 from Dr. Terrill Brown, III, a podiatric surgeon, who diagnosed chronic posterior and plantar left heel pain and noted that appellant underwent left foot surgery on June 2, 2014.

By decision dated October 29, 2014, OWCP denied modification of its January 23, 2014 decision as the medical evidence was insufficient to establish causal relationship.

On November 25, 2014 appellant again requested reconsideration and submitted a narrative statement indicating that she had worked for 8 hours per day with the possibility of 10 to 12 hours per day with the requirement of walking only 8 to 10 hours per day. She also resubmitted Dr. Brown's April 15 and 28, and June 19, 2014 reports.

Appellant submitted new reports dated May 6 through September 25, 2014 from Dr. Brown who noted that appellant's left foot pain had improved postsurgery. In his May 6, 2014 report, Dr. Brown noted that appellant had been diagnosed with insertional Achilles tendinitis and plantar fasciitis, left. He noted that appellant was a postal worker with modified work restrictions and that appellant had reported that "over the last two to four weeks these restrictions, although complied with, no longer provid[ed] her with [the] protection it was before." Appellant advised Dr. Brown that her condition was worsening and often times by the end of the day, she had to go home and get off her foot and could not bear weight on it until the next morning.

By decision dated December 5, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she had not submitted pertinent new and relevant evidence and had failed to show that OWCP had erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. In support of her November 25, 2014 reconsideration request, appellant submitted a narrative statement and reports dated May 6 through September 25, 2014 from Dr. Brown who noted that her left foot pain had improved postsurgery. In his May 6, 2014 report, Dr. Brown noted that appellant was a postal worker with modified work restrictions which were "complied with." The Board finds that submission of this evidence did not require reopening appellant's case for merit review as it failed to address the issue of causal relationship between appellant's foot condition and the September 14, 2013 employment incident, which was the issue before OWCP. Therefore, this evidence does not constitute relevant and pertinent new evidence and is insufficient to require OWCP to reopen the claim for consideration of the merits.

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ See *A.L.*, *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Appellant also resubmitted Dr. Brown's reports dated April 15 and 28, and June 19, 2014 in support of her request for reconsideration. The Board finds that submission of these reports did not require reopening appellant's case for merit review. As the Board denied her claim based on the lack of supportive medical evidence and this report repeats evidence already in the case record, it is cumulative and does not constitute relevant and pertinent new evidence.¹⁰ Therefore, it is not sufficient to require OWCP to reopen the claim for consideration of the merits.

On appeal appellant argues the merits of her claim. As noted above, the Board lacks jurisdiction to review the merits of this case.

The Board finds that as appellant did not meet any of the necessary requirements, OWCP properly denied a further merit review.¹¹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁰ See *Eugene F. Butler*, 36 ECAB 393 (1984).

¹¹ See *L.H.*, 59 ECAB 253 (2007).