

FACTUAL HISTORY

On February 24, 2015 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2015 he stepped out of his postal vehicle onto the sidewalk and felt pain in his right heel. He alleged, "Possibly could have stepped onto a rock exiting vehicle." Appellant asserted that he continued to experience heel pain throughout the remainder of the day.

Dr. Terry J. Felts, a podiatrist, completed a note on February 27, 2015 diagnosing fasciitis equinus and prescribing physical therapy. On the same date, she completed a form report diagnosing fasciitis. Dr. Felts indicated that appellant had pain in his right heel and fascia. She found that he was totally disabled for work from February 24 through March 2, 2015.

The employing establishment offered appellant a limited-duty assignment on March 2, 2015.

Dr. Felts completed a report on March 4, 2015 and diagnosed plantar fasciitis. She attributed appellant's diagnosed condition to prolonged walking and standing, but denied that he had sustained a specific injury. Dr. Felts opined that he was totally disabled through March 3, 2015 and indicated that he could return to light duty standing and walking less than two hours a day beginning March 4, 2015. She repeated her conclusions on March 13, 2015 noting that appellant's condition was aggravated by his employment as appellant was overweight and had walked a lot over many years at work.

In a letter dated May 6, 2015, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim and allowed 30 days for a response. It noted that Dr. Felts' reports were more supportive of an occupational disease claim rather than a traumatic injury.

Appellant responded and completed OWCP's questionnaire on March 13, 2015. He noted that he had a prescription for orthotics in 2013, but alleged that he experienced no issues until the February 21, 2015 incident. Appellant again asserted that his claim was for a traumatic injury occurring on February 21, 2015 while at work.

Dr. Felts submitted a form report dated May 8, 2015 and opined that appellant's condition was caused by prolonged walking and standing. She further indicated that he had a prior history of foot problems and was previously prescribed orthotics.

Dr. Felts completed a report on May 13, 2015 and noted that appellant asserted that he had a specific incident of heel pain while stepping out of a truck. She further noted that the state workers' compensation program would cover his injury for a traumatic injury, but not an occupational disease unless he could establish that his walking was particularly arduous.

By decision dated June 16, 2015, OWCP denied appellant's claim finding that he failed to submit medical opinion evidence establishing a causal relationship between his diagnosed condition and his accepted employment incident on February 21, 2015.

Appellant requested reconsideration of OWCP's June 16, 2015 decision through a form dated July 5, 2015 and received by OWCP on July 13, 2015. In support of his request, he submitted a narrative describing his employment incident and alleging that his letter demonstrated the causal relationship between his diagnosed condition and his February 21, 2015 employment incident. Appellant also submitted photographs of the exact location of his employment incident and the elevated cement edge which he believed caused his heel injury as well as a photograph of his work vehicle.

In a July 20, 2015 decision, OWCP declined to reopen appellant's claim for review of the merits finding that he failed to submit relevant and pertinent new evidence with his request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."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. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁵ 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.⁶ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁷ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 20 C.F.R. § 10.5(ee).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *J.Z.*, 58 ECAB 529 (2007).

⁷ *T.F.*, 58 ECAB 128 (2006).

claim, 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 specific employment activity or factors identified by the claimant.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to submit the necessary medical opinion evidence to meet his burden of proof to establish his traumatic injury claim.

Appellant alleged that he injured his right heel on February 21, 2015 when he stepped out of his postal vehicle onto the sidewalk. OWCP accepted his version of events as factual. Appellant also submitted a series of medical reports from Dr. Felts addressing the cause of his diagnosed condition of plantar fasciitis. Dr. Felts repeatedly indicated that she believed appellant's right plantar fasciitis to be the result of his employment activities over a period of time rather than occurring on February 21, 2015 as he claimed. It was only in her May 13, 2015 report, that Dr. Felts described appellant's "specific incident" of stepping out of his postal vehicle. She did not offer any opinion as to whether this history of injury was consistent with appellant's diagnosis or whether she believed that appellant's plantar fasciitis occurred as a result of this single traumatic incident. As there is no medical evidence supporting appellant's claim that stepping out of his postal vehicle on February 21, 2015 caused or contributed to his diagnosed condition of right plantar fasciitis, the Board finds that appellant has not met his burden of proof to establish a traumatic injury claim.

To the extent that appellant's statements and the medical evidence indicate that his foot condition was causally related to daily employment activities, he could alternatively file an occupational disease claim.⁹

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

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.¹⁰ Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.¹¹

⁸ A.D., 58 ECAB 149 (2006).

⁹ 20 C.F.R. §§ 10.5(q); 10.101; 10.116.

¹⁰ *Supra* note 1.

¹¹ 20 C.F.R. § 10.606(b)(3).

Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.¹² Section 10.607(a) of OWCP's regulations provide that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted a timely request for reconsideration however, it did not comply with the requirements of section 10.606(b)(3). As a result, the Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

In support of his request for reconsideration, appellant submitted a factual statement and photographs documenting his employment incident on February 21, 2015. He argued that his factual statement demonstrated causal relationship between his incident on February 21, 2015 and the condition which Dr. Felts treated and diagnosed. OWCP accepted that the employment incident occurred at the time and place alleged by appellant, but denied his claim finding that he had not submitted the necessary medical opinion evidence to establish a causal relationship between his employment incident and his diagnosed condition. The Board notes that the underlying issue, causal relationship, is a medical issue and must be supported by medical evidence. Appellant's general assertions are not medical in nature nor relevant to the underlying issue of causal relationship.¹⁴ Evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.¹⁵ As appellant's request for reconsideration did not contain evidence addressing the central aspect of his claim, his request did not comply with OWCP's regulations and was insufficient to require it to reopen his claim for consideration of the merits.

CONCLUSION

The Board finds that appellant failed to submit the necessary medical opinion evidence to establish a traumatic injury on February 21, 2015. The Board further finds that OWCP properly declined to reopen his claim for consideration of the merits on July 20, 2015.

¹² *Id.* at § 10.608.

¹³ *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

¹⁴ *See M.M.*, Docket No. 10-224 (issued October 6, 2010).

¹⁵ *Betty A. Butler*, 56 ECAB 545 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 20 and June 16, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board