

FACTUAL HISTORY

On July 10, 2015 appellant, then a 49-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she suffered plantar fasciitis in her feet as a result of walking at least 10 miles per day in her job. She indicated that she became aware of this disease or illness on December 15, 2014.

By letter dated July 22, 2015, OWCP advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail how the injury occurred. She was also asked to provide medical evidence. OWCP afforded appellant 30 days within which to submit the requested information.

In a July 1, 2015 report, Dr. Jack L. Rook, a Board-certified internist, noted that appellant had a history of progressively worsening bilateral foot pain affecting the left side more than the right. He explained that appellant worked as a letter carrier on a walking route and walked more than 10 miles per day since April 2014. Dr. Rook also indicated that appellant was on her feet for at least eight hours per day. He related that she first began to experience foot pain in December 2014, which began in the left foot and then the right foot. Dr. Rook advised that at that time, appellant was working up to seven days a week as there were Sunday deliveries before Christmas. He explained that her foot pain progressively worsened over the next few months despite receiving two pairs of orthotics. Dr. Rook noted that appellant denied any significant weight bearing activities outside of work or any traumatic events. He also indicated that x-rays taken by the podiatrist, revealed findings consistent with a diagnosis of plantar fasciitis and bilateral heel spurs. Dr. Rook related that appellant had no foot problems prior to working at the employing establishment. He examined her and diagnosed bilateral plantar fasciitis with x-ray evidence of heel spurs and muscle spasm on the left posterior calf musculature. Dr. Rook opined that appellant's duties as a letter carrier, which included a walking route that required her to be on her feet for eight hours a day to case and deliver mail contributed to the diagnosed conditions. He explained that the prolonged weight bearing caused stretching of the plantar fascia. Dr. Rook noted that the plantar fascia inserted into the calcareous bones bilaterally and the repetitive pulling in this region led to the development of microscopic tears where the plantar fascia met the calcaneus. He explained that this led to the development of the heel spurs due to calcification in the area of the ligamentous injury. Dr. Rook opined that, with a reasonable degree of medical certainty, appellant developed an occupational disease related to her work.

By decision dated August 28, 2015, OWCP denied appellant's claim. It found that the factual evidence did not support that the injury and/or events occurred. OWCP specifically noted that appellant did not respond to the questionnaire requesting additional information pertaining to her employment-related activities.

Darryl Parrott, a supervisor with the employing establishment, explained in a letter received by OWCP on September 1, 2015, that there was no evidence or documentation to refute anything in the employees claim. He noted that he was aware that she experienced pain and was purchasing better quality shoes and orthotic inserts, but he had no knowledge of the precise cause of the pain. Mr. Parrott noted that the duties included: lifting mail and parcels intermittently, up to 70 pounds throughout the day, and carrying mail and parcels up to 35 pounds for up to three to six hours per day. The duties also included: standing or walking for up to 10 hours per day, pushing, pulling, bending, stooping, and climbing up steps occasionally throughout the day.

Mr. Parrott noted that appellant initially chose the route knowing how much walking was entailed and was later unable to relinquish it due to union agreements.

On September 1, 2015 OWCP received a position description.

On September 4, 2015 appellant requested reconsideration. She argued that she never received a questionnaire requesting additional information regarding her employment-related activities. Appellant explained that her supervisor, Mr. Parrott advised her that he sent in all of the requested information.

In a decision dated September 17, 2015, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision. It found that the evidence was irrelevant or immaterial.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 FECA, 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 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 upon a traumatic injury or an occupational disease.⁴

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.

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that she developed sustained plantar fasciitis in her feet as a result of walking at least 10 miles per day in the performance of duty. OWCP denied her claim because she failed to establish the factual basis of her claim. The Board has carefully reviewed the record and finds that there is insufficient factual or medical evidence of record to support fact of injury as alleged.

OWCP informed appellant in a July 22, 2015 letter that the record was devoid of any medical or factual evidence to satisfy her burden of proof. Appellant was advised that she had the burden of proof to establish that she was injured as a result of her work-related duties. OWCP informed her that she needed to submit factual evidence regarding employment duties giving rise to the claimed condition.

The Board notes that appellant did not respond to the request for additional factual information. The record before OWCP at the time of its August 28, 2015 decision does not otherwise have any evidence confirming her work duties and how the claimed condition occurred. Because appellant failed to provide the requested factual information opinion as requested by OWCP, the Board finds that appellant has not met her burden of proof to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,⁷ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”⁸

⁶ *Betty J. Smith*, 54 ECAB 174 (2002).

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(3).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁹

ANALYSIS -- ISSUE 2

With her request for reconsideration dated September 4, 2015, appellant indicated that she did not receive the questionnaire. However, she noted that her supervisor, Mr. Parrott, had provided the requested information and informed her that he had sent in all of the requested information. The record reflects that on September 1, 2015, OWCP received a detailed report from Mr. Parrott, who explained that he did not refute her claim and essentially confirmed the duties that she performed. Mr. Parrott also described her employment activities and noted that she had informed him that she was experiencing foot pain. While OWCP refused to review the merits of appellant's claim, finding the information submitted on reconsideration to be irrelevant or immaterial, the Board disagrees. The Board finds that this evidence constitutes pertinent new and relevant evidence warranting further consideration of the merits.

The requirements for reopening a case for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The claimant need only submit evidence that is relevant and pertinent and not previously considered.¹⁰ If OWCP should determine that the new evidence submitted lacks probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.¹¹

The Board notes that the report from the employing establishment, which agrees with appellant's statement and describes appellant's duties, along with appellant's statement is pertinent new and relevant evidence with regard to the basis of OWCP's denial of the claim. The case shall be remanded to OWCP to conduct a merit review. After such further development as is deemed necessary, OWCP shall issue an appropriate merit decision.

On appeal, appellant made several arguments. However, in light of the Board's disposition it is premature to address the arguments at this juncture.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that an injury in the performance of duty. The Board also finds that OWCP improperly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *R.T.*, Docket No. 11-749 (issued December 23, 2011); *Mary A. Ceglia*, 55 ECAB 626 (2004); *see also Billy Scoles*, 57 ECAB 258 (2005).

¹¹ *See Dennis J. Lasanen*, 41 ECAB 933 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the above opinion. The August 28, 2015 decision of OWCP is affirmed.

Issued: March 8, 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