

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ On March 23, 2013 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a right shin strain and anterior compartment syndrome in the performance of duty. She stated that the pain began two hours into her route and intensified as she worked. Appellant first became aware of her condition and its relation to her employment on March 19, 2013. She stopped work on March 20, 2013.

In a decision dated September 18, 2014, the Board affirmed OWCP's March 12, 2014 decision, finding that appellant had not submitted sufficient medical evidence to establish a right leg injury causally related to factors of her employment. The facts and circumstances of the case, as set forth in the prior decision, are incorporated herein by reference.

By letter dated January 9, 2015, appellant, through her representative, requested reconsideration with OWCP following the Board's September 18, 2014 decision and submitted new evidence.

In a December 22, 2014 report, Dr. Melanie Sanders, a Board-certified orthopedic surgeon, advised that she began treating appellant on March 20, 2014. She indicated that she was unable to provide an opinion on causation because she did not have "a complete factual background as a subsequent treating physician, especially 20 months after the onset of symptoms." Dr. Sanders explained that the anterior tibial tendon typically becomes inflamed secondary to repetitive stress and not a single traumatic event. She noted that walking, carrying weight, climbing stairs, walking inclines, walking uneven terrains, and changes in activity levels could cause inflammation or degeneration. Dr. Sanders advised that the description of appellant's symptoms was consistent with anterior tibial tendon inflammation and that it could definitely occur during the course of normal walking, without misstep or acute injury. She further noted that the duties of a mail carrier would be consistent with activities that could injure the tendon.

By decision dated March 30, 2015, OWCP denied modification of its prior decision.

On June 5, 2015 appellant retired from the employing establishment.

On February 9, 2016 appellant requested reconsideration and submitted new evidence. In a January 26, 2016 report, Dr. Pamela Lynch, a Board-certified family practitioner, advised that she saw appellant on March 22, 2013 for a well visit. She stated that appellant told her that she hurt her right foot and shin at work two hours into her route. Appellant related going to an immediate care center which referred her to an orthopedist's office where she saw a physician

³ Docket No. 14-1076 (issued September 18, 2014).

assistant. She related that she wanted to see a physician that would do workers' compensation. Dr. Lynch noted that appellant thereafter was seen by a specialist over the next few years and was diagnosed with anterior tibial tendinitis. She stated: "[T]his diagnosis is a result of repetitive stress common to walking excessively on uneven terrain, climbing stairs, and walking inclines which is typical of [appellant's] job duties at the time of injury." Dr. Lynch advised that "an additional factor to the diagnosis was the added weight of the saddle bag appellant carried while walking her route." She related that appellant had a "complicated course including nerve injury and has never recovered function from this unfortunate series of events."

By decision dated May 9, 2016, OWCP denied appellant's request for reconsideration. It found that Dr. Lynch's report was irrelevant and immaterial as it merely repeated the history as told by appellant.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ its 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 its decision denying or terminating a benefit, a claimant's application for review must be received 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

ANALYSIS

In a March 30, 2015 merit decision, OWCP denied appellant's claim because evidence of record had not established that the diagnosed condition was causally related to factors of her employment. Appellant submitted a timely request for reconsideration received by OWCP on February 9, 2016, which was denied.

The Board finds that OWCP properly denied appellant's request for reconsideration. The underlying issue in this case is whether appellant established that factors of her employment caused the diagnosed condition. This is a medical issue. In support of reconsideration, appellant submitted the January 26, 2016 report from Dr. Lynch. Dr. Lynch advised that appellant related a history of hurting her right foot and shin at work while walking at work. She summarized the course of appellant's treatment and noted that she was diagnosed with anterior tibial tendinitis. Dr. Lynch observed that this condition could result from repetitive stress common to walking

⁴ 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).

⁵ 20 CFR § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

excessively on uneven terrain, climbing stairs, and walking inclines which was typical of appellant's job. However, while she noted appellant's work duties and indicated that her diagnosis was consistent with job duties. Dr. Lynch does not offer a specific opinion as to whether appellant's specific job duties caused or aggravated the diagnosed condition, her report is not relevant.⁸

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 10.606(b)(3) of OWCP's regulations, she was not entitled to further merit review of her claim.

On appeal appellant argued that OWCP's procedures provides that "rationalized medical opinion from a physician not previously of record requires a merit review when the denial rested on medical issues."⁹ However, as noted new evidence must not only be new, but relevant and pertinent. The Board finds that the newly submitted evidence was not relevant as Dr. Lynch did not offer a specific opinion as to whether job duties caused or aggravated the diagnosed condition.

CONCLUSION

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

⁸ See *Darletha Coleman*, 55 ECAB 143 (2003) (evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, 2.1602.6(b)(2) (October 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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