

FACTUAL HISTORY

On April 28, 2015 appellant, then a 25-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hyperkeratotic lesion and metatarsophalangeal joint pain as a result of prolonged walking on his mail route. He became aware of his condition and realized that it was causally related to his employment on August 5, 2014. Appellant stopped work on March 30, 2015.

Appellant submitted an undated statement and noted that on August 5, 2014 he experienced severe pain on the bottom of his feet. He was treated by Dr. Robert Kadish, a podiatrist, for the removal of corns and calluses caused by excessive walking and standing. Appellant indicated that he requested a different mail route with less walking and asserted that excessive walking on his current route caused the foot calluses. In an April 6, 2015 operative report, Dr. Kadish performed a right fifth metatarsal head resection and diagnosed right tailor bunion. In a certificate of health care provider, he noted appellant's condition had commenced on August 5, 2014. Dr. Kadish noted that appellant was unable to perform any of his job functions as a mail carrier at this time, which included walking and standing for prolonged periods of time. He diagnosed parakeratosis, keratoderma, and hammertoe. In a report dated April 21, 2015, Dr. Kadish treated appellant for corns and a fifth metatarsal head resection on the right foot. He noted findings of intact reflexes, intact sensation in the bilateral lower extremities, contracture in the left second, third, fourth and fifth toes and the right second, third and fourth toe, without prominence on the lateral and plantar aspect of the fifth metatarsal phalangeal joint on the right foot. Dr. Kadish diagnosed bunion, hammer toe, keratoderma, and parakeratosis.

On July 10, 2015 OWCP accepted appellant's claim for right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe.

Appellant submitted a June 9, 2015 duty status report from Dr. Kadish who noted that appellant could return to work part time with restrictions on May 20, 2015. In a work capacity form dated July 21, 2015, Dr. Kadish noted that appellant was not capable of performing his usual job without restrictions. He noted that appellant was unable to work for longer than two hours, walking was limited to two hours, and unlimited driving was allowed. Dr. Kadish noted that the restrictions would apply for one year. He advised that maximum medical improvement had not been reached.

Appellant submitted a claim for compensation (Form CA-7) for total disability for the period beginning August 14, 2014.

By letter dated August 18, 2015, OWCP asked appellant to submit additional information including a comprehensive medical report from his treating physician to support that the period of disability claimed was causally related to the accepted conditions of his claim.

On August 20, 2015 OWCP proposed to rescind the acceptance of appellant's claim for a right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe as it had accepted the claim before it had properly developed whether causal relationship was established.

Appellant submitted a prescription note from Dr. Kadish dated August 20, 2015, who noted that appellant could work in a sedentary position. In a report dated August 20, 2015, Dr. Kadish treated appellant for pain on the outside of his foot, which commenced in the prior week. He advised that appellant did not relate any trauma other than normal work activity. Dr. Kadish noted findings of normal deep tendon reflexes bilaterally, intact sensation, and no focal motor or sensory deficits in the bilateral lower extremities. He noted that x-rays revealed a fracture located at the right fourth metatarsal on the medial base which was transverse and incomplete with no articular involvement. Dr. Kadish diagnosed stress fracture of the metatarsals and prescribed a pneumatic cam walker to aid in ambulation and light-duty work.

By letter dated August 25, 2015, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted an August 25, 2015 work capacity evaluation from Dr. Kadish, who diagnosed bunions, sprain of right foot, metatarsophalangeal of the right foot, and hammer toes. Dr. Kadish noted that appellant was totally disabled from his regular job due to a broken right foot. In an August 28, 2015 report, he indicated that appellant presented on October 7, 2014 with right ankle pain. An ultrasound revealed swelling around the tendon. Dr. Kadish diagnosed tibial tendinitis, resolved. He noted that on August 20, 2015 appellant presented with a different pain on the outside edge of his right foot and reported that the pain began one week prior and did not relate to any trauma other than normal work activity. Dr. Kadish reported that x-rays revealed a fracture located on the right foot fourth metatarsal on the medial base which was transverse and incomplete with no articular involvement. He prescribed a cam walker and light-duty work.

In a September 3, 2015 report, Dr. Kadish noted first seeing appellant on October 7, 2014 for a painful right ankle and then for painful callous on the fifth sub metatarsal of the right foot. He noted findings on examination and diagnostic testing. Dr. Kadish related that appellant did extensive walking and climbing at work and he opined that the callous on the fifth sub metatarsal was caused from bone structure, pressure, and friction. He noted that when appellant "walks well over eight hours a day and over 10 miles of extensive walking and climbing at work, his callous can be very painful to ambulate on" and advised that "his callous may need to be trimmed occasionally to alleviate the pain." Dr. Kadish further noted that appellant's tibial tendinitis "can flare up at times from all the extensive walking and climbing [appellant] does" but, at that time, it was resolved. He noted appellant's course of treatment, including his August 20, 2015 right foot pain. Dr. Kadish noted that appellant had not related any trauma "other than normal work activity." In a work capacity evaluation dated September 10, 2015, he diagnosed right bunion, sprain of the foot metatarsophalangeal, and hammer toe. Dr. Kadish noted that appellant was totally disabled. In a work capacity evaluation dated September 24, 2015, he repeated his diagnoses and noted that appellant could return to work two hours per day with restrictions of no walking. In a prescription note dated October 8, 2015, Dr. Kadish released appellant to work without restrictions.

In an undated statement, appellant indicated that on August 5, 2014 he felt pain in both feet and Dr. Kadish diagnosed hammer toe, callous, and tibial tendinitis. He indicated that his

manager would not accept medical documentation unless it was a CA-7 form. Appellant reported filling out the wrong claim form without assistance from management. He indicated that the employing establishment required that he walk a 10-mile route and he could not bear the pain of walking the long mail route due to swelling and inflammation of his foot. Appellant filed a grievance and noted management threatened termination because he did not report for work or was not able to complete his route. He requested a shorter walking route or a riding route, but management did not accommodate his request.

Appellant submitted a claim for compensation (Form CA-7) for total disability from July 22 to August 21, 2015.

In an October 14, 2015 decision, OWCP rescinded its prior acceptance of appellant's claim for right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe. It found that the prior acceptance of his claim for right foot condition was improper because the record did not contain a rationalized medical report relating these conditions to the August 5, 2014 alleged work condition. OWCP advised that appellant failed to submit a medical report containing a clear opinion that his right foot conditions were due to prolonged walking at work.

LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.³ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁴ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁵

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation employing establishment and in conformity with statutory provisions, where there is good cause for so doing, such as mistake, or fraud. It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where OWCP later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.⁶

ANALYSIS

On July 10, 2015 OWCP accepted that appellant developed a right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe due to prolonged walking while delivering

³ 5 U.S.C. § 8128.

⁴ *John W. Graves*, 52 ECAB 160, 161 (2000).

⁵ *See* 20 C.F.R. § 10.610.

⁶ *Supra* note 3; *see Delphia Y. Jackson*, 55 ECAB 373 (2004).

his mail route.⁷ Appellant filed a claim for disability compensation beginning on August 14, 2014.

On October 14, 2015 OWCP rescinded its July 10, 2015 decision accepting appellant's claim for right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe. It found that the prior acceptance of his claim for right foot conditions was improper because the record did not contain a rationalized medical report relating these conditions to the August 5, 2014 alleged work duties. OWCP advised that appellant had failed to submit a medical report containing a clear opinion that his right foot conditions were due to prolonged walking at work.

Section 10.126 of OWCP's regulations provides that a decision of OWCP shall contain findings of fact and a statement of reasons and be accompanied by information about the claimant's appeal rights.⁸ A final decision of OWCP must also include findings of fact and provide a correct description of the basis for the decision so that the parties of interest will have a clear understanding of the precise defect of the claim and the kind of evidence which would tend to overcome it.⁹ The Board finds that OWCP failed to set forth proper findings and provide analysis in its decision as required under section 10.126 of OWCP's regulations. Therefore, OWCP has failed to render a proper decision to rescind the acceptance of the claim.¹⁰

CONCLUSION

The Board finds that OWCP failed to meet its burden to rescind acceptance of appellant's claim for right bunion, sprain of the right foot metatarsophalangeal, and right hammer toe.

⁷ Appellant reporting developing a right bunion and hammer toe conditions as a result of prolonged walking required as a letter carrier.

⁸ 20 C.F.R. § 10.126.

⁹ *Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

¹⁰ *See Robert A. Redmond*, 40 ECAB 796 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 14, 2015 decision is reversed.

Issued: September 2, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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