

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**A.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Harrisburg, PA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-1640  
Issued: May 3, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 9, 2016 appellant filed a timely appeal from a March 22, 2016 merit decision and a June 28, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish a right foot condition causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 30, 2015 appellant, a 33-year-old mail carrier, filed an occupational disease claim (Form CA-2), alleging that she developed a right foot condition causally related to factors of her federal employment.

On January 21, 2016 OWCP advised appellant that it required factual and medical evidence to determine whether she was eligible for compensation benefits. It requested that she submit a comprehensive report from a treating physician describing her symptoms and the medical reasons for her condition, with an opinion as to whether her claimed condition was causally related to her federal employment. OWCP afforded appellant 30 days to submit this evidence.

In a written statement dated February 1, 2016, appellant asserted that her right foot condition developed as a result of her walking, lifting, pushing, pulling, stooping, and being on her feet all day long. She related that she had a collapsed bone in her right foot which was aggravated by her continuous, daily walking. Appellant advised that she might require surgery to ameliorate her right foot condition.

On February 18, 2016 the employing establishment controverted the claim. It asserted that appellant was provided with ample breaks and was given a stool to sit, as needed, while performing her tasks at work.

In a January 25, 2016 report, Dr. Jennifer O. Dempsey, an osteopath, advised that she had examined and treated appellant for right foot pain on May 12, August 11, and October 27, 2015. She noted that appellant had a history of pain in her right second toe and the bottom of her right foot. Dr. Dempsey reported that appellant had experienced pain in her right foot for a few years, but that recently it had been worsening. Appellant had tried multiple, different shoes, but continued to have pain. Dr. Dempsey advised on examination that appellant had a dorsally contracted right second toe, which was semi-reducible, edema to the plantar right second metatarsal-phalangeal joint, and erythema to the dorsal right second toe proximal phalangeal joint. She found pain on palpation and reduced range of motion to the right second metatarsal-phalangeal joint. Dr. Dempsey also found pain on palpation of the right second interspace.

Dr. Dempsey noted that she had scheduled appellant for x-rays and a magnetic resonance imaging scan of her right foot to rule out a neuroma, but her insurance company had denied the request. She diagnosed hammertoe, deformity right second toe, bursitis right second metatarsal-phalangeal joint, neuroma right second interspace, and pain right foot. Dr. Dempsey reported that appellant had some improvement in her symptoms, but continued to have irritation and pain due to the dorsal contracture of her right second toe. She opined that appellant's job as a mail carrier was adversely affecting her foot condition and that she would benefit from surgery to correct her painful foot deformity.

By decision dated March 22, 2016, OWCP found that appellant had failed to meet her burden of proof to establish a right foot condition causally related to the accepted federal employment factors. It noted that Dr. Dempsey had failed to provide a well-rationalized medical opinion explaining how work factors contributed to appellant's claimed right foot condition.

On June 10, 2016 appellant requested reconsideration. She did not submit any additional evidence.

By decision dated June 28, 2016, OWCP denied appellant's request for reconsideration as it did not meet the requirements for a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of 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.<sup>3</sup> 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.<sup>4</sup>

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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.<sup>5</sup>

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed right foot condition and her federal employment. This burden includes providing medical evidence from a physician who

---

<sup>2</sup> *Id.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed right foot condition to factors of her federal employment. For this reason, appellant has not discharged her burden of proof to establish her claim.

Dr. Dempsey advised in her January 25, 2016 report, that appellant had experienced right foot pain for several years which was worsening. She diagnosed hammertoe, deformity right second toe, bursitis right second metatarsal-phalangeal joint, neuroma right second interspace and pain right foot. Dr. Dempsey advised that appellant had attained some improvement in her condition, but that she continued to have irritation and pain due to the dorsal contracture of her right second toe. She concluded that appellant's job as a mail carrier was adversely affecting her right foot condition and opined that she would benefit from surgery to ameliorate this condition.

Dr. Dempsey did not provide a probative, rationalized medical opinion that the claimed right foot condition was causally related to employment factors. Her opinion on causal relationship is of limited probative value as it does not contain medical rationale explaining how appellant's claimed right foot condition was caused by factors of employment.<sup>7</sup> While Dr. Dempsey diagnosed hammer toe of the right foot, she did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. Her January 25, 2016 report thus did not constitute adequate medical evidence to establish that appellant's claimed right foot condition was causally related to factors of her federal employment.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim, however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that her claimed right foot condition was causally related to factors of her federal employment.

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.

---

<sup>6</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not considered by OWCP, or by submitting relevant and pertinent new evidence not previously considered by OWCP.<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>9</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.<sup>10</sup>

**ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. Moreover, she submitted no additional medical evidence with her reconsideration request which would constitute pertinent new and relevant and evidence. Appellant has not met any of the criteria to warrant a merit review.<sup>11</sup> OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits in its June 28, 2016 decision.

**CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a right foot condition causally related to factors of her federal employment. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

---

<sup>8</sup> 20 C.F.R. § 10.606(b)(3); *see* generally 5 U.S.C. § 8128(a).

<sup>9</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>10</sup> *Supra* note 8 at § 10.608(b).

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28 and March 22, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 3, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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