

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

On March 20, 2016 appellant, then a 61-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained leg, ankle, and foot conditions in the performance of duty on June 26, 2015. She described her work duties on June 26, 2015 as checking and replacing oxygen tanks, making charts, stocking medical supply cabinets, transporting patients in the hospital, changing bed sheets, dumping dirty linens, taking patient's vital signs, removing intravenous lines, and plugging up beds.

In an accompanying statement, appellant described additional work duties including transporting patients by wheelchair to the lobby, preparing clinic rooms, and restocking the blanket warmer. She indicated that it became very uncomfortable to stand and walk, requiring her to use foot and ankle support.

Appellant submitted an unsigned medical note dated October 6, 2015 diagnosing left posterior tibial tendinitis and left pes planus.

In a letter dated April 22, 2016, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It noted that she had not submitted sufficient factual evidence to substantiate an employment incident and further noted that no diagnosis of any condition resulting from her injury had been provided. OWCP provided appellant with a questionnaire in which it asked her to describe in detail how the claimed injury occurred. It afforded her 30 days for a response.

On May 16 and 23, 2016 Dr. Gage Caudell, a podiatrist, diagnosed posterior tibial tendinitis and pes planus of the left foot. He recommended testing to determine if appellant's posterior tibial tendon was torn. Dr. Caudell opined that her foot condition was related to her flat foot.

By decision dated May 26, 2016, OWCP denied appellant's claim, finding that she had not established fact of injury. It noted that she had not submitted sufficient factual evidence to establish that the employment events occurred as alleged.

Appellant submitted an additional May 23, 2016 note from Dr. Caudell in which he opined that her primary problem was her tendon and her flatfoot. Dr. Caudell also implicated an injury to the joint cartilage and injected her left anterolateral ankle with lidocaine. On June 20, 2016 he diagnosed posterior tibial tendinitis and pes planus of the left lower extremity as well as osteochondritis dissecans of the left talus and gastrocnemius equinus of the left lower extremity. Dr. Caudell recommended surgery.

Appellant requested reconsideration from OWCP on June 27, 2016. She submitted notification of a left subtalar arthrodesis scheduled for September 15, 2016 and a postoperative

appointment with Dr. Caudell dated September 26, 2016. Appellant also resubmitted the statement that accompanied her Form CA-1.

By decision dated August 22, 2016, OWCP denied appellant's request for reconsideration, finding that the evidence submitted in support of her request for reconsideration was irrelevant or immaterial and had no bearing on the underlying issue which pertained to the time, place, and manner of her alleged traumatic injury.

LEGAL PRECEDENT

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.⁴ Section 10.606(b)(3) of the Code of Federal Regulations provides 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.⁵ Section 10.608 of OWCP's regulations provides 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.⁶ Section 10.607(a) of OWCP's regulations provides 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.⁷

ANALYSIS

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

Appellant filed a timely request for reconsideration of OWCP's May 26, 2016 merit decision on June 27, 2016. In support of her request for reconsideration, she resubmitted a statement that accompanied her original claim. Appellant also submitted additional notes from Dr. Caudell, dated May 23 and June 20, 2016 diagnosing posterior tibial tendinitis and pes planus of the left lower extremity as well as osteochondritis dissecans of the left talus and gastrocnemius equinus of the left lower extremity. She also provided evidence of surgery schedule for September 15, 2016 and a postoperative appointment with Dr. Caudell dated September 26, 2016.

⁴ 5 U.S.C. §§ 8101-8193, 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608.

⁷ 20 C.F.R. § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

OWCP denied appellant's claim as she failed to provide factual evidence sufficient to establish that an employment incident occurred on June 26, 2015 as alleged.

The evidence submitted with appellant's reconsideration request did not provide any new information pertaining to the underlying issue of how the claimed injury occurred. While she resubmitted a factual statement describing her work duties, the Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁸ The Board also notes that, as the underlying issue is factual in nature, the medical evidence submitted from Dr. Caudell is irrelevant as the factual component of appellant's claim has not been established. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

Therefore, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or submitted relevant and pertinent new evidence not previously considered. As appellant did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.¹⁰

On appeal, appellant disagrees with OWCP's denial of her claim and asserts that she was permanently injured on the job. However, as explained, the Board lacks jurisdiction over the merits of the claim.

CONCLUSION

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

⁸ *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ *B.T.*, Docket No. 16-0785 (issued September 21, 2016); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁰ *B.T.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2017
Washington, DC

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

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

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