



## **FACTUAL HISTORY**

On August 1, 2016 appellant, then a 46-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2016 he experienced right heel pain when he was carrying mail on his route. The claim form did not indicate whether he stopped work.

OWCP received an authorization for examination (Form CA-16) dated August 1, 2016, signed by the employing establishment, which authorized appellant's medical treatment from Concentra Manchester.

In an August 1, 2016 work activity status report, Dr. Anjum Razzaque, a Board-certified internist, noted a diagnosis of right plantar fasciitis. She indicated that appellant could return to modified work with restrictions of only ground level work, no climbing ladders, and no driving company vehicles. In a note of the same date, Dr. Razzaque indicated under activity status, "[r]eturn to modified work/activity today." She set forth the same work restrictions.

A health and resource manager for the employing establishment controverted appellant's claim in an August 3, 2016 letter. She alleged that he had not sustained an injury because there was no indication of where or how his condition developed, which led the employing establishment to believe that he had a preexisting condition. The manager also noted that appellant only mentioned pain while walking, but pain was not considered a valid diagnosis. She asserted that there was no objective rationale to support a causal relationship between his employment duties and his alleged condition.

In an August 9, 2016 report, Dr. Razzaque related that appellant's right heel hurt after he had been active. She noted associated symptoms of limping and localized tenderness, which were exacerbated with direct pressure and weight-bearing. Dr. Razzaque indicated that appellant had not been working. Upon physical examination of his foot, she reported no tenderness and no crepitus on palpation with no warm masses. Range of motion was full and normal bilaterally. Dr. Razzaque diagnosed right plantar fasciitis. She authorized appellant to return to modified work activity. Dr. Razzaque provided a work status note, which related his previous work restrictions.

By letter dated August 10, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he provide additional medical evidence to establish a diagnosed medical condition as a result of the alleged incident. Appellant was afforded 30 days to submit the requested information.

OWCP received medical treatment from Dr. Daniel Thouvenot, a podiatrist, who related in an August 12, 2016 examination note that appellant complained of right heel pain. Dr. Thouvenot noted that appellant's occupation required prolonged standing and reviewed appellant's history.<sup>2</sup> Upon physical examination of appellant's right foot, he observed pain to palpation to the insertion of the plantar fasciitis of the bilateral feet. Range of motion of the foot structure, subtalar, metatarsal, and metatarsal-phalangeal joint were within normal limits. Dr. Thouvenot submitted an August 12, 2016 work excuse note, which indicated that appellant

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<sup>2</sup> Only two pages of this report were in the record.

could return to work. He noted that appellant should limit the time on his feet in order to help facilitate the healing process and that he should not be on a walking route from August 12 to 31, 2016.

On August 22, 2016 OWCP received a job offer from the employing establishment for a modified city carrier position. The duties of the job offer required casing letters and flats, pulling down route assignments, and sorting parcels. The physical requirements of the position included standing, fine manipulation, simple grasping, walking inside only, and ground level work inside up to eight hours. Appellant accepted the job offer on August 17, 2016.

In an August 24, 2016 attending physician's report (Form CA-20), Dr. Thouvenot noted a date of injury of July 30, 2016. He related that appellant complained of pain after a mail route and that standing and walking worsened the pain. Dr. Thouvenot reported a diagnosis of right plantar fasciitis fibromatosis and right foot calcaneal spur. He checked a box marked "yes" which indicated that appellant's condition was caused or aggravated by the employment activity. Dr. Thouvenot explained: "[appellant] states conditions were due to walking and standing." He reported that appellant was partially disabled beginning August 12, 2016. Dr. Thouvenot noted that appellant could perform light duty, including desk work and walking less than five minutes at a time until current condition had subsided. He reported in an August 31, 2016 work status note that appellant could return to work with no restrictions.

On September 6, 2016 appellant advised OWCP that he was changing his treating physician because his privacy rights had been violated. He felt that the physician recommended by the employing establishment did not have his best interest at heart.

OWCP denied appellant's claim by decision dated September 20, 2016. It accepted the July 30, 2016 employment incident and the diagnosis of right plantar fasciitis. OWCP denied appellant's claim, however, because the medical evidence of record was insufficient to establish that his right foot condition was causally related to the accepted employment incident.

On October 4, 2016 OWCP received an "amended" August 1, 2016 report, printed on September 30, 2016, by Dr. Razzaque, who related that appellant had presented with right heel pain. Dr. Razzaque indicated that appellant had worked as a postal worker for the past 17 years and that his job required walking and driving. She noted an acute musculoskeletal injury date of July 30, 2016. Dr. Razzaque reported: "this is the result of 'was walking and felt a sharp shooting pain in right foot.'" She related that appellant noticed pain in his right heel while walking his route over the last two weeks, which had gradually worsened. Upon physical examination of his right foot, Dr. Razzaque reported no tenderness except the insertion of the plantar fascia and no masses, no crepitus, and no nodularity along the plantar fascia. Range of motion and strength was full. Dr. Razzaque related that an x-ray examination of appellant's right heel showed no plantar spur or fracture. She diagnosed right plantar fasciitis. Dr. Razzaque authorized him to return to work.

Appellant resubmitted Dr. Razzaque's August 9, 2016 report. He also provided various physical therapy reports dated August 1 to 10, 2016.

OWCP received an August 31, 2016 report by Dr. Thouvenot, who noted appellant's complaints of right heel pain. Dr. Thouvenot related that appellant's pain to the insertion of the plantar fasciitis had improved. He reported that an x-ray examination of appellant's right foot showed inferior calcaneal spurring, but no fracture, stress fracture, or dislocations. Sensory testing of the lower extremities was intact. Dr. Thouvenot diagnosed plantar fascial fibromatosis, right foot calcaneal spur, right ankle synovitis and tenosynovitis, and right foot pain.

On January 13, 2017 appellant requested reconsideration. He noted that the letters mailed to him were sent to his former address, so he was unable to submit the documentation requested in a timely manner. Appellant alleged that once he received the Notice of Decision he immediately had his physician submit additional proof that he sustained his injury while performing his job for the employing establishment. He resubmitted Dr. Thouvenot's August 24, 2016 Form CA-20.

By decision dated February 16, 2017, OWCP denied appellant's reconsideration request. It found that his reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of appellant's claim.

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

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.<sup>6</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that the employment incident

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<sup>3</sup> *Id.*

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

occurred as alleged, but fail to show that his disability or condition relates to the employment incident.<sup>9</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

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

Appellant alleged that he sustained a right foot injury as a result of a July 30, 2016 employment incident. In a September 20, 2016 decision, OWCP accepted that the July 30, 2016 incident occurred as alleged and diagnosed a condition. However, it denied appellant's claim finding insufficient medical evidence to establish that his diagnosed medical condition was causally related to the accepted incident. The Board finds that he has not established that he sustained a right foot injury on July 30, 2016.

Appellant initially received treatment from Dr. Razzaque, who provided reports dated August 1 and 9, 2016. Dr. Razzaque related his symptoms of right heel pain after being active and of limping and localized tenderness exacerbated with weight-bearing. Upon physical examination of appellant's right foot, she observed no tenderness and no crepitus on palpation and full range of motion. Dr. Razzaque diagnosed right plantar fasciitis and indicated that he could return to modified duty. While she provided a medical diagnosis, she did not provide an opinion on the cause of appellant's right foot condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup> Accordingly, Dr. Razzaque's reports are insufficient to establish appellant's claim.<sup>14</sup>

In the two pages of the August 12, 2016 examination note, Dr. Thouvenot related that appellant's occupation required prolonged standing and that he complained of right heel pain. He reported that physical examination of appellant's right foot revealed pain to palpation to the insertion of the plantar fasciitis. In his August 24, 2016 attending physician's report,

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<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>10</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>14</sup> *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

Dr. Thouvenot noted diagnoses of right plantar fasciitis fibromatosis and right foot calcaneal spur. He checked a box marked “yes” which indicated that appellant’s condition was caused or aggravated by the employment activity. Dr. Thouvenot explained: “[appellant’s] states conditions were due to walking and standing.” The Board has held, however, that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.<sup>15</sup> Furthermore, in his explanation, Dr. Thouvenot merely repeated appellant’s allegations that his condition resulted from walking and standing. He has not provided adequate medical rationale explaining how appellant’s employment activities caused or aggravated his right foot condition.<sup>16</sup> These reports, therefore, are insufficient to establish appellant’s claim.

As appellant had not submitted probative medical evidence, he has failed to meet his burden of proof.<sup>17</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>18</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>19</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP decision for which review is sought.<sup>20</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>21</sup> If the request is timely but fails to meet at least one

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<sup>15</sup> *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

<sup>16</sup> *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>17</sup> As previously noted, the record contains a Form CA-16 dated August 1 2016. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). On return of the case record, OWCP shall determine whether appellant is entitled to payment of medical expense pursuant to this Form CA-16 authorization.

<sup>18</sup> 5 U.S.C. § 8128(a).

<sup>19</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>20</sup> *Id.* at § 10.607(a).

<sup>21</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>22</sup>

### ANALYSIS -- ISSUE 2

In a decision dated September 20, 2016, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record failed to establish that his right foot condition was causally related to the accepted July 30, 2016 employment incident. On January 13, 2017 it received his request for reconsideration. In a decision dated February 16, 2017, OWCP denied further merit review of appellant's case pursuant to 5 U.S.C. § 8128(a).

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

In support of his request for reconsideration appellant resubmitted the August 9, 2016 report of Dr. Razzaque and submitted a new report of Dr. Thouvenot dated August 31, 2016. Although Dr. Thouvenot's report is new it is substantially similar to his earlier reports. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case on the merits.<sup>23</sup> Thus, this submission is insufficient to require OWCP to reopen the case for further merit review.

Additionally, the physical therapy reports appellant submitted also do not constitute a basis for reopening the case for further merit review. The underlying issue in this case was whether appellant established a right foot injury causally related to the July 30, 2016 employment incident. That is a medical issue that must be addressed by relevant medical evidence.<sup>24</sup> Physical therapists are not physicians as defined under FECA and, therefore, are not competent to render medical opinion.<sup>25</sup> Thus, these reports do not constitute pertinent new and relevant evidence and are insufficient to warrant further merit review.

However, appellant submitted an "amended" August 1, 2016 report by Dr. Razzaque, which was not previously submitted. Dr. Razzaque indicated that he had worked as a postal worker for the past 17 years and that his job required walking and driving. She noted an acute musculoskeletal injury date of July 30, 2016 and explained that on July 30, 2016 appellant was walking at work and felt a sharp shooting pain. Dr. Razzaque provided physical examination findings and diagnosed right plantar fasciitis. The Board finds that this report constitutes

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<sup>22</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>23</sup> *See A.M.*, Docket No. 16-1875 (issued August 23, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>24</sup> *See A.M.*, *id.*

<sup>25</sup> Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA. *See* U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see also A.L.*, Docket No. 16-1737 (issued August 17, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individual such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

relevant and pertinent new evidence not previously considered by OWCP.<sup>26</sup> Dr. Razzaque noted the July 30, 2016 employment incident and provided an opinion on causal relationship, which directly addresses OWCP's determination in its September 20, 2016 decision that the medical evidence of record failed to provide an opinion on the cause of appellant's right foot condition.<sup>27</sup>

The Board finds that as Dr. Razzaque's August 1, 2016 report constitutes relevant and pertinent new evidence not previously considered by OWCP, it is sufficient to require OWCP to reopen appellant's claim for consideration of the merits.<sup>28</sup> Reopening a claim for merit review does not require a claimant to submit all evidence which may be necessary to discharge his burden of proof.<sup>29</sup> 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.<sup>30</sup> On remand, it shall conduct a merit review of the entire record. After such further development as is deemed necessary, OWCP shall issue an appropriate merit decision.

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right foot injury causally related to the accepted July 30, 2016 employment incident. The Board also finds that OWCP improperly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>26</sup> See *D.W.*, Docket No. 16-1044 (issued October 20, 2016).

<sup>27</sup> See *C.H.*, Docket No. 17-0074 (issued March 17, 2017).

<sup>28</sup> *Supra* note 18.

<sup>29</sup> See *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>30</sup> See *Dennis J. Lasanen*, 41 ECAB 933 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed and the February 16, 2017 decision is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 6, 2017  
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