

FACTUAL HISTORY

On October 5, 2017 appellant, then a 49-year-old sales and service associate (SSA)/distribution clerk, filed an occupational disease claim (Form CA-2) alleging that he developed plantar fasciitis in both feet due to factors of his federal employment. He explained that he stood while sorting letters up to three hours a day and stood at the retail window for up to four hours a day. Appellant did not stop work. No evidence was submitted in support of his claim.

By development letter dated October 16, 2017, OWCP informed appellant that additional information was necessary to support his claim. It noted that no diagnosis of any condition resulting from his employment had been received and that a physician's opinion explaining how his alleged employment factors caused, contributed to, or aggravated any diagnosed condition had not been provided. OWCP requested that appellant provide a comprehensive narrative medical report from his physician which contained medical rationale as to whether the work-related exposure resulted in a medically diagnosed condition. It afforded him 30 days to submit the requested information.

No further evidence was received. By decision dated November 30, 2017, OWCP denied appellant's occupational disease claim. It found that he had not submitted any medical evidence containing a diagnosis in connection with the accepted employment factors.

On January 30, 2018 appellant requested reconsideration of the merits of his claim. He did not submit additional evidence.

By decision dated February 8, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the

³ *Supra* note 1.

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(q).

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 diagnosed condition is causally related to the employment factors identified by the claimant.⁷

A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment.

Appellant alleged that he developed bilateral plantar fasciitis due to the standing required in the performance of his position. OWCP accepted that appellant's work duties required standing. However, appellant failed to submit medical evidence which diagnosed a foot condition and which offered an opinion regarding causal relationship. In an October 16, 2017 development letter, OWCP informed him that the evidence of record was insufficient as he had not submitted medical evidence which diagnosed a condition resulting from the accepted employment factors. It asked appellant to provide such medical evidence, but he did not respond to its request. Accordingly, as he failed to submit medical evidence identifying a medical condition in relations to the standing requirement of his position, he has not met his burden of proof to establish his claim.¹⁰

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.

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.¹¹

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

⁷ *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

⁸ *Victor J. Woodhams*, *supra* note 5.

⁹ *Id.*

¹⁰ *See J.K.*, Docket No. 16-1850 (issued January 9, 2017); *K.G.*, Docket No. 15-1139 (issued September 28, 2016).

¹¹ 5 U.S.C. § 8128(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.¹²

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹³ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁴ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁵

ANALYSIS -- ISSUE 2

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

Appellant did not offer a legal argument in support of his request for reconsideration, nor did he submit any evidence. Accordingly, the Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Moreover, appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. The Board finds, therefore, that appellant has not met the regulatory requirements and OWCP properly declined his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹⁶

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010).

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁵ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁶ *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2018 and November 30, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 9, 2018
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