

walking and standing. The employing establishment noted that she had been on limited duty since February 5, 1998 and had retired on August 1, 2015.

Appellant provided a narrative statement and asserted that she was constantly on her feet in the performance of her federal job duties. She contended that she delivered mail for 18 years beginning in 1980. Appellant later worked as a window clerk standing on tile floors. She alleged that she generally worked eight hours a day.

In a development letter dated December 10, 2015, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. It afforded her 30 days for response.

In a report dated November 17, 2015, Dr. Basimah Khulusi, a Board-certified physiatrist, examined appellant's left foot. She noted that appellant performed light-duty work since 1998 due to the accepted condition of carpal tunnel syndrome. Dr. Khulusi reported that appellant worked as a letter carrier for the first 18 years of her 35-year career. She noted that prior to her retirement appellant's light-duty work consisted of delivering express mail, parcel pick up, collections, and picking up mail from another employing establishment facility. Appellant also performed the duties of a window clerk. She noted that her left foot condition began in March 2015. Dr. Khulusi diagnosed left heel spur, and left plantar fasciitis. She noted that appellant worked on her feet for most of her career and that her work activities had resulted in repetitive straining of the soft tissue structures of her feet leading to the development of the bone spur on the left and the development of plantar fasciitis affecting the left foot.

On December 28, 2015 appellant provided a narrative statement in response to OWCP's request for information. She noted that while working as a window clerk she was provided with a stool, but that she was still required to walk and stand. Appellant noted that she performed that position from 2005 through 2009. In March 2015, she experienced numbness in the toes on her left foot. In July 2015, appellant's left foot began to "feel tired" which she attributed to walking and standing on the hard floors. The pain progressed to soreness and a stabbing pin-like feeling in her heel as well as pain on both sides of her left heel. Appellant retired in August 2015, but continued to experience left foot pain and sought medical treatment about a week after her retirement.

By decision dated March 1, 2016, OWCP denied appellant's occupational disease claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her diagnosed left foot condition and her implicated employment duties.

On April 10, 2016 appellant requested reconsideration of the March 1, 2016 decision. In support of her request, she submitted an April 14, 2016 report from Dr. Khulusi. Dr. Khulusi diagnosed calcaneal bone spur on the left and left plantar fasciitis. Appellant also provided a December 3, 2015 report from Dr. Stephen C. Wan, a podiatrist. Dr. Wan noted that she attributed her left foot condition to prolonged walking and standing at the employing establishment. He diagnosed left calcaneal bone spur and plantar fasciitis of the left foot. Dr. Wan noted appellant's various positions at the employing establishment and concluded that she experienced substantial weight loading and mechanical stress to her feet which contributed to the formation of calcaneal

bone spur and soft tissue pain in the realm of plantar fasciitis. He opined that her job contributed significantly to the onset of her left foot conditions.

By decision dated July 15, 2016, OWCP denied modification of its March 1, 2016 decision. It found that the additional medical evidence of record did not contain sufficient medical reasoning to establish causal relationship between appellant's diagnosed conditions and her employment activities.

On August 4, 2016 appellant requested reconsideration of the July 15, 2016 decision and submitted a report from Dr. Khulusi dated August 1, 2016. Dr. Khulusi asserted that she had previously provided the necessary medical rationale and requested that OWCP accept appellant's claim for left bone spur and plantar fasciitis.

By decision dated October 26, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim.

Appellant again requested reconsideration of the July 15, 2016 merit decision on November 29, 2016. She provided a November 17, 2016 note from Dr. Khulusi which reviewed the medical evidence appellant had previously submitted including Dr. Wan's report. Dr. Khulusi requested that OWCP refer appellant for a second opinion evaluation.

By decision dated December 9, 2016, OWCP reviewed the merits of appellant's claim, but denied modification of the July 15, 2016 merit decision. It noted that her October 28, 2014 job offer provided for a sedentary position eight hours a day. OWCP again found that the medical evidence of record was not well-reasoned and therefore insufficient to meet appellant's burden of proof.

On March 14, 2017 appellant requested reconsideration of the December 9, 2016 merit decision. She submitted a March 2, 2017 report from Dr. Khulusi noting that standing and walking on hard surfaces as well as carrying and lifting repetitively over the years caused appellant's bilateral plantar fasciitis and aggravated her heel spur. Appellant asserted, "The medical science and medical studies do support that prolonged time standing on hard surfaces and increased time walking does increase the risk of presenting with plantar fasciitis."

By decision dated June 12, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that Dr. Khulusi's March 2, 2017 report did not provide any new medical reasoning in support of appellant's claim.

On November 17, 2017 appellant again requested reconsideration of the December 9, 2016 merit decision. In support of her request, she provided a report dated November 9, 2017 from Dr. Khulusi diagnosing calcaneal bone spur on the left and left plantar fasciitis. Appellant asserted that she had provided OWCP with additional medical evidence with the March 14, 2017 request for reconsideration. Dr. Khulusi requested that OWCP accept appellant's diagnosed conditions or refer her for a second opinion evaluation.

By decision dated December 11, 2017, OWCP denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant failed to meet one of the above standards, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set for at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

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

In support of her November 17, 2017 reconsideration request, appellant submitted a report from Dr. Khulusi dated November 9, 2017. Dr. Khulusi again diagnosed calcaneal bone spur on the left and left plantar fasciitis. She asserted that she had provided OWCP with additional medical

² 5 U.S.C. § 8128(a). Under section 8128 of FECA, 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 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

⁷ *See supra* note 3. *See also id.*, *Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Supra* note 6; *Annette Louise*, 54 ECAB 783 (2003).

⁹ *C.A.*, Docket No. 17-1050 (issued May 21, 2018).

evidence with the March 14, 2017 request for reconsideration. Dr. Khulusi requested that OWCP accept appellant's diagnosed conditions or refer her for a second opinion evaluation.

The issue underlying the denial of appellant's claim is medical in nature -- that is whether she has established left foot conditions was causally related to her employment activities. Her request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, it did not advance a relevant legal argument not previously considered. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).

The Board finds that Dr. Khulusi's November 9, 2017 report is repetitive. The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰ The Board further finds that Dr. Khulusi's November 9, 2017 report is irrelevant as it failed to address causal relationship, the underlying medical issue before OWCP.¹¹ Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.¹² The Board thus finds that this evidence submitted on reconsideration does not constitute relevant and pertinent new evidence and is therefore insufficient to require OWCP to reopen appellant's claim for consideration of the merits.

The Board accordingly finds that appellant failed to meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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).

¹⁰ See *L.R.*, Docket No. 18-0400 (issued August 24, 2018).

¹¹ *Id.*, *G.W.*, Docket No. 16-0517 (issued April 27, 2016).

¹² *K.T.*, Docket No. 18-0193 (issued May 21, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2018
Washington, DC

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

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

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