

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pico Rivera, CA, Employer**

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**Docket No. 19-0060
Issued: April 15, 2019**

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2018 appellant filed a timely appeal from a September 26, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 13, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 May 16, 2016 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right foot between the bottom and ankle area on May 14,

¹ 5 U.S.C. § 8101 *et seq.*

2016, when she stepped down from a vehicle in an area covered with small rocks at work while in the performance of duty. She did not stop work. In an accompanying narrative statement, appellant further described the circumstances of her claimed May 14, 2016 injury. She indicated that when she arrived at her delivery location, which was blocked by cars, she parked her vehicle and stepped onto an area lined with small rocks. Appellant felt pain in her right foot, but assumed it was plantar fasciitis which flared up every day. She indicated that her pain never ceased. At the end of her workday appellant limped quite badly and told an officer-in-charge (OIC) that she needed to seek medical treatment. On May 16, 2016 she informed the OIC that she was going to see a physician because she still had foot pain. Appellant questioned whether she had sustained a new injury or had plantar fasciitis.

On the reverse side of the claim form, appellant's supervisor controverted the claim, contending that appellant did not report her injury until May 16, 2016. The supervisor also contended that she had plantar fasciitis in the injured foot claimed.

OWCP subsequently received form reports dated May 19, June 17, and July 8, 2016, by Dr. Sangarappillai Manoharan, an attending physician Board-certified in emergency medicine. Dr. Manoharan diagnosed right foot plantar fasciitis and subsequent right ankle sprain. He placed appellant off work for one day on May 18, 2016 due to uncontrolled symptoms. Dr. Manoharan indicated that she could perform modified activity at home and work with restrictions from May 19 through June 3 and June 17 through July 22, 2016. He opined that appellant's diagnosed conditions and resultant disability were due to the May 14, 2016 incident. In a note dated June 15, 2016, Dr. Manoharan referred appellant for physical therapy and reiterated his diagnosis of right foot plantar fasciitis.

In a May 17, 2016 attending physician's report (Form CA-20), Dr. Steve D. Kim, a physician specializing in occupational medicine, diagnosed right plantar fasciitis and indicated that the condition was caused or aggravated by the claimed May 14, 2016 employment activity.

A report and clinical care notes dated July 25 and 27 and August 2, 8, and 11, 2016 from appellant's physical therapist were received.

Dr. Andrew S.F. Wu, a Board-certified diagnostic radiologist, reported that a July 22, 2016 right foot magnetic resonance imaging (MRI) scan revealed an impression of no acute fracture, Type 1 tear of the tibialis posterior tendon proximal to the navicular with mild tenosynovitis, and moderate-to-severe secondary osteoarthritis of the tibiotalar joint with moderate subchondral edema.

OWCP, by development letter dated June 8, 2017, informed appellant that her claim had initially been accepted as a minor injury, but was now reopened for consideration of the merits. It requested that she respond to an attached factual development questionnaire and provide additional medical evidence to establish that she sustained a diagnosed condition as a result of the alleged employment incident. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated July 13, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the May 14, 2016 employment incident occurred as alleged and that a medical

condition had been diagnosed. However, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident. It noted that appellant failed to respond to the June 8, 2017 development letter.

On July 3, 2018 appellant requested reconsideration. She reiterated her history of injury. Appellant also claimed that OWCP did not consider the medical evidence submitted. She maintained that a recent right foot MRI scan revealed a small tear on the tendon, which she believed occurred at the time of injury. Appellant noted that an MRI scan performed prior to her May 14, 2016 injury showed no sign of injury to her tendon. She submitted a copy of OWCP's July 13, 2017 decision previously of record.

By decision dated September 26, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence submitted was irrelevant or immaterial.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. It may review an award for or against payment of compensation at any time based on its own motion or on application.²

A claimant seeking reconsideration of a final decision must present arguments or provide evidence which: (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.³ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁴ 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.⁵

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).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim. The Board finds that she has not shown that OWCP erroneously applied or interpreted a specific point of law. In her July 3, 2018 request for reconsideration, appellant contended that

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *Id.* at § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁵ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

OWCP failed to consider the medical evidence of record. She maintained that a recent right foot MRI scan revealed a small tear on the tendon which she attributed to the accepted May 14, 2016 employment incident. Appellant further maintained that she believed that an MRI scan performed prior to the accepted May 14, 2016 employment incident showed no sign of injury to her tendon. The Board finds, however, that OWCP properly considered all of the evidence of record before denying appellant's traumatic injury claim in its July 13, 2017 decision.⁶ Moreover, appellant's belief that she sustained a work-related injury based on diagnostic test results and being asymptomatic before the injury is not dispositive to the underlying issue of whether her diagnosed right foot condition was causally related to the accepted employment incident. That is a medical issue which must be addressed by pertinent and relevant medical evidence.⁷ As a lay person, appellant is not competent to render a medical opinion and, therefore, her contentions are not new and relevant evidence sufficient to require further merit review.⁸ For the reasons stated above, the Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP in support of her request for reconsideration. Appellant submitted a copy of OWCP's July 13, 2017 decision, but this document would not constitute new evidence regarding the causal relationship between appellant's diagnosed right foot condition and the accepted May 14, 2016 employment incident. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

The Board accordingly finds that appellant has not met 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.¹⁰

On appeal appellant contends that she sustained a work-related right foot injury on May 14, 2016, reiterating that an MRI scan revealed that she had a tear in her right foot tendon which did not exist prior to her claimed injury. As explained above, the Board lacks jurisdiction over the merits of the case and the evidence or argument submitted on reconsideration was insufficient to warrant further merit review.

⁶ See *D.P.*, Docket No. 17-0450 (issued June 20, 2018).

⁷ See *L.C.*, Docket No. 17-0258 (issued March 5, 2018); *M.M.*, Docket No. 14-0367 (issued May 9, 2014).

⁸ See *A.D.*, Docket No. 17-1879 (issued December 3, 2018); *M.M.*, *id.*; *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁹ See *J.G.*, Docket No. 16-1576 (issued November 18, 2016); *S.C.*, Docket No. 11-1395 (issued September 22, 2011).

¹⁰ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

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).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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