

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

M.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Oklahoma City, OK, Employer)

**Docket No. 18-0563
Issued: February 21, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On January 23, 2018 appellant filed a timely appeal from a December 14, 2017 merit decision and a January 9, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish plantar fasciitis causally related to the accepted factors of his federal employment; and (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested an oral argument. By order dated November 20, 2018, the Board, after exercising its discretion, denied appellant's request for an oral argument, finding that the arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0563 (issued November 20, 2018).

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

FACTUAL HISTORY

On July 7, 2016 appellant, then a 56-year-old building equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed plantar fasciitis as a result of factors of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on May 7, 2016. Appellant continued to work in a light-duty capacity.

By development letter dated July 12, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the medical and factual evidence necessary to establish his claim and provided a questionnaire for him to complete and return. OWCP afforded appellant 30 days to submit the requested information.

On July 22, 2016 OWCP received appellant's response to its development letter. Appellant described his employment duties as "heavy lifting, working off ladders, lifts, metal work, dock levelers, case moves at stations, rooftop and split air conditioning units for filter routes, spring cleaning of coils, compression replacements, *etc.*" He also indicated that his job required walking on a nearly one million square foot floor. Appellant related that he had informed his supervisor that his foot was giving him problems, but he was continually assigned work involving heavy lifting, working off lifts, squatting, and mainly installing copper air lines in the ceiling.

In an August 2, 2016 letter, D.L., acting field maintenance manager at the employing establishment, related that while working in a large facility appellant was required to walk while carrying tools or equipment to different work environments. He explained that building maintenance employees had many avenues to assist them in navigating the large facility, such as golf carts, bicycles, and vehicles for operating outside. D.L. indicated that appellant had used these vehicles to travel and assist him with his assigned duties. He further noted that appellant had a work truck available at all times for transport to a work site, which appellant had utilized many times. D.L. reported that due to the nature of building maintenance, employees' daily job assignments would include such activities as standing in the shop or work area for an extended period of time. He further related that appellant's manager was not aware of appellant's discomfort when performing these duties, and therefore, no changes in work assignment were made.

OWCP also received a position description for an equipment mechanic.

By decision dated August 15, 2016, OWCP denied appellant's occupational disease claim. It accepted his duties as a building mechanic, but denied his claim because the medical evidence of record failed to establish a diagnosed condition causally related to the accepted factors of his federal employment.

On October 17, 2016 appellant requested reconsideration. In statements dated October 8 and November 2, 2016, he reiterated his belief that walking at work in a large facility and doing building repairs caused his foot conditions. Appellant also described the medical treatment he had received.

OWCP received a July 28, 2016 work status note by Dr. Kyle Fanning, a Board-certified family physician, who related that he had treated appellant on July 28, 2016 and indicated that appellant could return to work.

Appellant was also treated by Dr. Gordon Bean, a podiatrist, who related in an October 7, 2016 report that appellant was examined for complaints of right heel pain. He reviewed appellant's history and conducted a physical examination. Upon examination, Dr. Bean reported significant pain to palpation of appellant's plantar medial tubercle of the heel, noting tenderness extending along the medial slip of the plantar fascia. Neurological examination showed no evidence of posterior tibial, superficial peroneal, or sural nerve pathology. Dr. Bean diagnosed plantar fascial fibromatosis, right foot calcaneal spur, and right foot pain.

In disability and work excuse slips dated October 7, 2016, Dr. Bean indicated that appellant could not work from October 7 to 17, 2016 due to plantar fasciitis.

By decision dated November 25, 2016, OWCP denied modification of the August 15, 2016 decision. It found that the medical evidence submitted was insufficient to establish a diagnosed condition causally related to factors of his employment.

On December 13, 2016 appellant requested reconsideration. In statements dated December 7, 2016 and May 12, 2017, he provided further details regarding the work duties that he believed contributed to his right foot, knee, and hip pain.

In a November 30, 2016 report, Dr. Bean conducted a follow-up examination of right heel pain. He related: "patient believes that his painful heel condition was the result of the physical demands related to his work." Dr. Bean indicated that appellant walked many miles each day at work due to the nature of his responsibilities. He provided examination findings and diagnosed plantar fascial fibromatosis, right foot calcaneal spur, and right foot pain. Dr. Bean opined: "the physical demands required at work have resulted in an over use injury to his heel, evidenced by the heel spur noted on his radiographs and the pain associated with palpation or ambulation of the insertional area of the plantar fascia, plantar medial tubercle of the heel." He completed a duty status report (Form CA-17) and indicated that appellant could work with restrictions.

OWCP received a December 5, 2016 statement by W.B., a coworker and mail processing equipment mechanic, who related that he witnessed appellant limping and/or favoring his right foot at work between the first week of June and the last week of August. W.B. described other examples when he witnessed appellant having difficulty performing his duties.

By decision dated August 13, 2017, OWCP denied modification of the November 26, 2016 decision. It found that the medical evidence established a diagnosis of plantar fasciitis, but denied his claim because the medical evidence failed to establish that his foot condition resulted from his accepted employment factors.

On September 15, 2017 appellant requested reconsideration.

OWCP received an April 17, 2017 report by Dr. Bean who related that appellant continued to have right heel pain "stemming from a work[-]related overuse injury that started back in May of

2016.” Dr. Bean reported continued pain to palpation of appellant’s plantar heel area and diagnosed plantar fascial fibromatosis and right foot pain.

By decision dated December 14, 2017, OWCP denied modification of the August 13, 2017 decision. It found that Dr. Bean’s statement on causal relationship did not include the specific job duties which caused or contributed to appellant’s foot condition.

On January 3, 2018 appellant requested reconsideration. No other evidence was received.

By decision dated January 9, 2018, OWCP denied reconsideration of the merits of appellant’s claim. It found that appellant had not met the requirement of 5 U.S.C. § 8128(a) to warrant merit review.

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 by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.⁵

In an occupational disease claim, a claimant’s burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸

³ *Supra* note 1.

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

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

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

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

Appellant alleged that he developed plantar fasciitis as a result of his employment duties as a building mechanic. OWCP accepted that his employment duties required extensive walking at the employing establishment premises while carrying equipment. The record also included a medical diagnosis of right plantar fasciitis. However, OWCP denied appellant's claim because it determined that appellant had not submitted a rationalized medical report sufficient to establish causal relationship between his diagnosed foot condition and factors of his federal employment.

Appellant was treated by Dr. Bean for complaints of right heel pain. In an initial October 7, 2016 report, Dr. Bean reported significant pain to palpation of appellant's plantar medial heel and tenderness extending along the medial slip of the plantar fascia. He diagnosed plantar fascial fibromatosis, right foot calcaneal spur, and right foot pain. In a November 30, 2016 report, Dr. Bean indicated that appellant walked many miles each day at work due to the nature of his responsibilities. He opined: "the physical demands required at work have resulted in an over use injury to his heel, evidenced by the heel spur noted on his radiographs and the pain associated with palpation or ambulation of the insertional area of the plantar fascia, plantar medial tubercle of the heel." Dr. Bean reiterated in an April 17, 2017 report that appellant's right heel pain stemmed "from a work[-]related overuse injury."

Although Dr. Bean provided an opinion on causal relationship, the Board finds that he did not provide adequate medical rationale to establish causal relationship. His statement on causation failed to provide sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, as alleged by appellant.⁹ Specifically, the Board notes that Dr. Bean did not discuss what building mechanic duties would cause or aggravate his plantar fasciitis condition.¹⁰ Without explaining how physiologically the movements involved in any specific employment duties caused or contributed to appellant's diagnosed condition, Dr. Bean's opinion on causal relationship is of limited probative value and fails to meet appellant's burden of proof.¹¹

In a July 28, 2016 work status note, Dr. Fanning related that he had treated appellant on July 28, 2016 and that appellant could return to work. He did not, however, offer an opinion or explanation on the cause of appellant's diagnosed right foot condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² This report, therefore, is also insufficient to establish appellant's claim.

⁹ *M.M.*, Docket No. 15-0607 (issued May 15, 2015).

¹⁰ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹¹ *J.I.*, Docket No. 18-0286 (issued September 17, 2018); *M.M.*, *supra* note 9.

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of causal relationship based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹³ Because appellant has failed to provide sufficient medical evidence to establish that his plantar fasciitis was causally related to the accepted factors of his federal employment, he has not met his burden of proof to establish his occupational disease claim.

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 compensation at any time on his own motion or on application.¹⁴

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.¹⁵

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.¹⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ 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.¹⁸

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).

The issue presented on appeal was whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.

¹³ *L.J.*, Docket No. 17-1554 (issued February 5, 2018); *Patricia J. Bolleter*, 40 ECAB 373 (1988).

¹⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁵ 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).

¹⁶ 20 C.F.R. § 10.607(a).

¹⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

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

In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and he did not advance a new and relevant legal argument not previously considered. Consequently, he is not entitled to review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁹ Following OWCP's most recent August 13, 2017 decision, appellant requested reconsideration on January 3, 2018. OWCP did not receive additional evidence with his reconsideration request. Accordingly, the Board finds that appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The Board finds, therefore, that appellant is not entitled to review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁰

As appellant's application for review did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied his request for reconsideration without reopening the case for a review on the merits.²¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish plantar fasciitis 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).

¹⁹ *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

²⁰ *P.L.*, Docket No. 18-1145 (issued January 4, 2019).

²¹ *R.C.*, Docket No. 17-0595 (issued September 7, 2017); *M.E.*, 58 ECAB 694 (2007).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2018 and December 14, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 21, 2019
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