

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

R.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Clarita, CA, Employer**

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**Docket No. 18-1263
Issued: February 7, 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 June 8, 2018 appellant filed a timely appeal from a January 12, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated August 23, 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 his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 1, 2017 appellant, then a 52-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed medical conditions of his feet and left ankle due to

¹ 5 U.S.C. § 8101 *et seq.*

standing and walking while carrying a mail satchel weighing between 15 to 45 pounds for eight hours a day while in the performance of duty.²

By development letter dated June 8, 2017, OWCP requested that appellant provide factual and medical evidence in support of his occupational disease claim. It afforded him 30 days to submit the requested information.

On April 24, 2017 Dr. Seong M. Yoo, a podiatrist, completed a report and noted that he first examined appellant in January 2013 due to foot and ankle pain. He provided the results of magnetic resonance imaging (MRI) scans of appellant's ankles dated August 23, 2016. On the right, the scan demonstrated metatarsophalangeal (MTP) degenerative changes with joint effusion, bursitis, chronic pressure lesion to the fifth MTP joint, and tarsometatarsal joint degenerative changes without acute fracture or dislocation. On the left, the scan demonstrated first MTP degenerative changes with joint effusion, bursitis, chronic pressure lesion on the fifth MTP joint, and tarsometatarsal joint degenerative changes without acute fracture or dislocation. Dr. Yoo opined that appellant's conditions were directly related to his work, noting that appellant was required to walk all day as a function of his job duties. He concluded, "It is my opinion that regardless of when the initial time of complaint for his foot and ankles started, his job duties for the [employing establishment] has slowly contributed to the progressive nature of his conditions over the past few years."

By decision dated August 23, 2017, OWCP denied appellant's occupational disease claim. It found that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment factors.

On October 25, 2017 appellant requested reconsideration of the merits of his claim. He provided a report dated September 23, 2017 from Dr. Yoo which included the results from the August 23, 2016 MRI scans of appellant's bilateral ankles. Dr. Yoo also opined that appellant's conditions of arthritis to the foot and ankle, degenerative tear of the plantar plate, and bursitis of the left forefoot were directly related to his work. He again determined that appellant's job duties had contributed to the progressive nature of his conditions.

By decision dated January 12, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.³ Section 8128(a) of FECA⁴ vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment

² Appellant has filed eight additional claims with OWCP which are not before the Board at this time.

³ 20 C.F.R. § 10.607(a).

⁴ 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.

of compensation at any time on its own motion or on application by a claimant.⁵ To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.⁶ 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.⁷

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁹ When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁰

ANALYSIS

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

Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3). Appellant did, however, submit relevant and pertinent new evidence not previously considered.¹¹

In support of his request for reconsideration, appellant submitted a new medical report from Dr. Yoo. In his report dated September 23, 2017, although substantially similar to his April 24, 2017 report previously of record, Dr. Yoo added the diagnosed conditions of arthritis of the foot and ankle, degenerative tear of the plantar plate, and bursitis of the left forefoot. He further opined that these conditions were directly related to appellant's employment duties. Prior to the submission of the September 23, 2017 report, appellant had not provided medical evidence including a definite diagnosis. Dr. Yoo's new report directly addressed the basis upon which

⁵ *Id.*; *L.S.*, Docket No. 18-0811 (issued November 13, 2018).

⁶ 20 C.F.R. § 10.606(b)(3); *see also L.S., id.*

⁷ *Id.* at § 10.608(b).

⁸ *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

⁹ *See supra* note 3. *See also L.S., supra* note 5; *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁰ *L.S., supra* note 5; *Annette Louise*, 54 ECAB 783 (2003).

¹¹ *K.S.*, Docket No. 18-1022 (issued October 24, 2018).

OWCP denied appellant's claim as it provided a diagnosed condition and discussed its relationship to appellant's employment.¹²

The Board thus finds that OWCP improperly refused to reopen appellant's case for further review of the merits, as the evidence he submitted, in support of his reconsideration request, is relevant and pertinent new evidence not previously considered.¹³ Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge his or her burden of proof.¹⁴ 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.¹⁵

As appellant has submitted relevant and pertinent new evidence not previously considered by OWCP, he is entitled to a review of the merits of his claim under section 10.606(b)(3) of OWCP's regulations.¹⁶ The case will be remanded to OWCP to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, it shall issue an appropriate merit decision on the claim.

CONCLUSION

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

¹² *Id.*; *M.C.*, Docket No. 17-1983 (issued August 17, 2018).

¹³ *Supra* note 6; *M.C.*, *id.*

¹⁴ *M.C.*, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 7, 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