

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

M.P., Appellant	)	
	)	
and	)	Docket No. 20-0948
	)	Issued: August 11, 2022
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tampa, FL, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On March 14, 2020 appellant filed a timely appeal from a September 17, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days elapsed from the last merit decision dated September 24, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's case.<sup>3</sup>

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 17, 2019, the date of OWCP's last decision, was March 15, 2020. As this fell on a Sunday, appellant had until the following business day, Monday, March 16, 2020, to file the appeal. Because using March 18, 2020, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 14, 2020, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the issuance of the September 17, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## 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 June 27, 2018 appellant, then a 41-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained tarsal tunnel syndrome on the right side and plantar fasciitis of the right foot due to factors of her federal employment, including repetitive motions performing her job. She noted that she first became aware of her conditions on May 4, 2012 and their relationship to factors of her federal employment on June 14, 2018. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on June 14, 2018 and returned to modified-duty work on June 25, 2018. No additional evidence was submitted.

In a July 12, 2018 letter, the employing establishment challenged appellant's claim, contending that it was not filed within three years from the date of her awareness of the alleged injury and she submitted no medical evidence to support her claimed conditions.

OWCP, by development letter dated July 20, 2018, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to respond.

By decision dated September 24, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that she had not responded to the July 20, 2018 development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP received a series of medical reports by Dr. Bruce Kammerman, an attending physician specializing in family and emergency medicine, in support of appellant's claim. In narrative reports dated July 2, 2018 through July 9, 2019, Dr. Kammerman described her employment duties, which included casing approximately 200 to 900 pieces of mail two hours in the morning while standing in the same position, removing and distributing heavier flats of magazines and newspapers, and transferring heavy packages from flats and lifting approximately 6 to 7 full trays of mail weighing 20 to 50 pounds and 30 to 50 large parcels weighing up to 70 pounds with both hands into her vehicle for delivery on her route that had 800 delivery points. Appellant then transferred the mail into satchels and walked 10 miles per day on her route and stood on her feet 12 to 13 hours per day, six days per week, and on occasion during forced overtime shifts. She also exited her truck approximately 500 times per day. Appellant sometimes repeated her work duties twice per day. Dr. Kammerman concluded that her diagnoses of plantar fascial fibromatosis, tarsal tunnel syndrome, right lower limb, and spontaneous rupture of extensor tendons, right ankle and foot were causally related to her rural carrier work duties.

On August 13, 2019 appellant requested reconsideration regarding the September 24, 2018 decision. She submitted additional medical evidence from Dr. Kammerman. In duty status reports

(Form CA-17) dated March 12, May 6, and July 9, 2019, Dr. Kammerman reiterated his prior diagnoses of plantar fascial fibromatosis and tarsal tunnel syndrome, right lower limb, and opinion that the diagnosed conditions were work related. He also outlined a series of light-duty work restrictions.

Dr. Kammerman, in an August 13, 2019 report, restated appellant's description of her rural carrier work duties and his opinion that her plantar fascial fibromatosis, tarsal tunnel syndrome, right lower limb, and spontaneous rupture of extensor tendons, right ankle and foot were causally related to her work duties.

Appellant resubmitted Dr. Kammerman's May 6 and July 9, 2019 narrative reports which described her employment duties and found that her right ankle and foot conditions were work related.

OWCP, by decision dated September 17, 2019, denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

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 or her own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument 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.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> 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.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

### ANALYSIS

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

On August 13, 2019 appellant timely requested reconsideration of OWCP's September 24, 2018 decision, which denied her occupational disease claim, finding that she did not submit sufficient evidence to establish the alleged factors of her federal employment which she attributed her conditions and a diagnosed medical condition causally related to those employment factors. She submitted a series of narrative reports dated July 2, 2018 through August 13, 2019 from Dr. Kammerman. Dr. Kammerman's reports consistently noted appellant's account of her specific work duties, which included casing approximately 200 to 900 pieces of mail, removing and distributing heavier flats of magazines and newspapers, transferring heavy packages from flats and lifting approximately 6 to 7 full trays of mail weighing 20 to 50 pounds and 30 to 50 large parcels weighing up to 70 pounds with both hands into her vehicle and then into satchels for delivery on her route, walking 10 miles per day on her route, standing on her feet 12 to 13 hours per day, and exiting her truck approximately 500 times per day, six days per week, and on occasion during forced overtime shifts, that she related caused her claimed right ankle and foot conditions. Additionally, his reports found that her diagnosed right ankle and foot conditions of plantar fascial fibromatosis, tarsal tunnel syndrome, right lower limb, and spontaneous rupture of extensor tendons, right ankle and foot were causally related to her work duties.

The Board finds that the reports dated July 2, 2018 through August 13, 2019 from Dr. Kammerman constitute pertinent new and relevant evidence as they specifically address the underlying factual and medical issue in this case, *i.e.*, whether appellant established factors of her federal employment which she believed caused or aggravated her diagnosed right ankle and foot conditions. Therefore, the submission of this evidence requires reopening of her claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).<sup>9</sup> Accordingly, the Board will set aside OWCP's September 17, 2019 decision and remand the case for an appropriate merit decision on appellant's claim.<sup>10</sup>

### CONCLUSION

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

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<sup>9</sup> *M.R.*, Docket No. 19-1449 (issued March 11, 2020); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 11, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board