



of the claim to include other pulmonary embolism without acute cor pulmonale. OWCP paid appellant wage-loss compensation.

On October 22, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Jiab H. Suleiman, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of his accepted conditions, the extent of any disability, and appropriate treatment. In a November 12, 2019 report, Dr. Suleiman concluded that appellant's accepted condition of right ankle ligament sprain had resolved. He opined that the requested additional peroneal surgery was unnecessary.

In a January 20, 2020 report, Dr. Allan M. Grant, a Board-certified orthopedic surgeon, reviewed Dr. Suleiman's report and provided examination findings. He explained that he disagreed with Dr. Suleiman regarding the recommended surgery. Dr. Grant opined that appellant was disabled from any position which required standing or walking.

On July 30, 2020 OWCP referred appellant, to Dr. Jeffrey Lawley, an osteopathic Board-certified orthopedic surgeon serving as the impartial medical examiner (IME), to resolve the conflict in the medical opinion evidence.

In a report dated September 30, 2020, Dr. Lawley related appellant's physical examination findings, and concluded that appellant was not manifesting any orthopedic impairment or pathology which may have been caused or aggravated by appellant's work injury on August 2, 2016. As appellant had a normal clinical examination, he did not require further treatment and could return to full duty.

OWCP continued to receive medical reports from Dr. Grant dated November 16, 2020, January 18 and February 8, 2021. Dr. Grant continued to opine that appellant had chronic peroneal tendon issues, and should be limited to sedentary work. He also continued to recommend peroneal tendon revision surgery, which he noted was not a typical procedure and was used on rare occasions.

By decision dated February 22, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the opinion of Dr. Lawley, the IME, represented the special weight of the evidence and established that appellant no longer had disability or residuals due to his accepted employment injury.

On March 2, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 27, 2021.

Following the hearing, OWCP received subsequent report from Dr. Grant dated June 7, 2021, wherein he repeated his opinion that appellant should undergo further right ankle tendon surgery.

By decision dated August 9, 2021, an OWCP hearing representative affirmed the February 22, 2021 termination decision.

OWCP subsequently received an additional report from Dr. Grant dated August 4, 2021, and an August 23, 2021 form report. In these reports, Dr. Grant noted appellant's diagnoses as

peroneal tendon rupture and right ankle nerve entrapment. He restated appellant's work restrictions.

On September 10, 2021 appellant requested reconsideration. By decision dated December 8, 2021, OWCP denied modification of the August 9, 2021 decision.

On January 26, 2022 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted a January 13, 2022 form report, wherein Dr. Grant reported that appellant was medically limited to weightbearing as tolerated. Dr. Grant noted that appellant was held off work from February 8 to April 1, 2022 due to pain, and he also noted that, on November 16, 2020, appellant had previously been given permanent work restrictions of sedentary work only, with no walking, standing, or driving.

In an attending physician's report (Form CA-20) dated January 13, 2022, Dr. Grant noted that, effective February 8, 2021, appellant was placed in an off-work status until April 1, 2022, due to pain, and that as of November 16, 2020 he had permanent work restrictions.

By decision dated April 26, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On May 9, 2022 appellant filed a timely appeal to the Board. By decision dated March 7, 2023, the Board affirmed OWCP's April 26, 2022 nonmerit decision.

On March 29, 2023 appellant, through counsel, again requested reconsideration. In support thereof, he submitted a February 6, 2022<sup>3</sup> report, wherein Dr. Grant diagnosed chronic peroneal tendon issues with sural nerve entrapment and opined that appellant could not perform his date-of-injury job, but was capable of sedentary work. Dr. Grant recommended probable excision of peroneal tendons and exploration and possible excision of sural nerve.

By decision dated May 21, 2023, OWCP summarily denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

In its May 21, 2023 decision, OWCP failed to comply with the review requirements of FECA and its implementing regulations.<sup>4</sup> Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>5</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall

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<sup>3</sup> Counsel referenced an April 6, 2022 report from Dr. Grant. This appears to be a typographical error as the report received is dated February 6, 2022.

<sup>4</sup> *D.R.*, Docket No. 21-1229 (issued July 6, 2022); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

<sup>5</sup> 5 U.S.C. § 8124(a).

contain findings of fact and a statement of reasons.<sup>6</sup> As well, OWCP's procedures provide that the reasoning behind its evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>7</sup>

In its May 21, 2023 decision, OWCP summarily denied appellant's reconsideration request. It failed to explain whether he demonstrated clear evidence of error in OWCP's last merit decision.<sup>8</sup> The Board will, therefore, set aside OWCP's May 21, 2023 nonmerit decision and remand the case for findings of fact and a statement of reasons to be followed by an appropriate decision regarding appellant's reconsideration request.<sup>9</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the May 21, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 15, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> 20 C.F.R. § 10.126.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>8</sup> OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. *Id.* at *Reconsiderations*, Chapter 2.1602.5a (September 2020).

<sup>9</sup> *See Order Remanding Case, C.W.*, Docket No. 23-0142 (issued June 15, 2023); *Order Remanding Case, D.R.*, Docket No. 21-1229 (issued July 6, 2022); *T.P.*, Docket No. 19-1533 (issued April 30, 2020).