

employment. He related that he engaged in prolonged standing and walking over the years, which caused him to experience compression, squeezing, and nerve pain in the feet, requiring surgery. Appellant noted that he first became aware of his condition on October 1, 2018 and realized its relation to his federal employment on July 28, 2020. He did not stop work.

In a September 11, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and attached a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted an October 9, 2019 visit note from Dr. Franklin Harry, a Board-certified podiatrist, assessing postoperative pain, bilateral tarsal tunnel syndrome (TTS), plantar fascial fibromatosis, calcaneal spur, ankle pain, and bilateral foot pain.

OWCP also received a November 12, 2019 discharge summary and progress notes dated November 12, 2019 through January 29, 2020 from an unidentified physical therapist.

In a November 22, 2019 visit note, Dr. Harry administered injections and diagnosed plantar fascial fibromatosis, bilateral sinus tarsi syndrome, calcaneal spur, metatarsalgia, and ankle pain.

A November 22, 2019 x-ray report of appellant's feet noted an impression of minimal calcaneal spur at the insertion of the plantar fascia.

In February 12 and March 9, 2020 notes, Dr. Harry treated appellant and diagnosed plantar fascial fibromatosis, calcaneal spur, ankle pain, bilateral foot pain, bilateral TTS, tinea pedis, sinus tarsi syndrome of right and left ankle, metatarsalgia, and onychomycosis.

A July 28, 2020 operative report from Dr. Harry noted a diagnosis of right TTS and described the right tarsal tunnel release procedure performed.

In an August 13, 2020 visit note, Dr. Harry treated appellant and reiterated his prior diagnoses.

Appellant also submitted an August 14, 2020 form report, wherein Dr. Harry noted that appellant would be incapacitated for 6 to 12 weeks following surgery.

In a September 26, 2020 statement, appellant noted that he has been a member of management for over 20 years, and that prolonged standing and walking while performing his duties led to developing TTS on both feet, requiring surgery. He explained that he performed these activities five to six days a week, for eight-to-twelve-hour shifts, while walking the workroom floor. Appellant related that, while he indicated an October 1, 2018 date of illness on his Form CA-2, the actual date should be October 2019, the date he began seeing Dr. Harry. He attached an undated note from Dr. Harry diagnosing bilateral TTS.

By decision dated October 27, 2020, OWCP found that the evidence of record was sufficient to establish that the employment factors occurred as described. However, it denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship

between appellant's diagnosed medical conditions and the accepted factors of his federal employment.

Appellant continued to submit evidence, including an undated note in which Dr. Harry opined that it was possible that appellant's TTS was caused by work-related overuse and/or injury.

An October 27, 2020 report from Dr. Harry noted a diagnosis of left TTS and described the left tarsal tunnel release procedure that he performed.

On November 23, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 9, 2021, OWCP's hearing representative affirmed the October 27, 2020 decision.

Thereafter, OWCP received a March 17, 2021 notification of personnel action (Form SF-50) noting that appellant voluntarily retired on that date.

On January 7, 2022 appellant requested reconsideration of the February 9, 2021 decision. No additional evidence was received.

By decision dated January 20, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵ When a timely application for reconsideration does not meet at least one

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the OWCP decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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.

⁵ *Id.* at § 10.606(b)(3).

of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a 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).⁷

In support of his reconsideration request, appellant submitted a March 17, 2021 Form SF-50 noting his retirement date. While this evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether he has established causal relationship between his diagnosed conditions and the accepted factors of his federal employment. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸ Therefore, the above evidence does not constitute relevant and pertinent new evidence not previously considered by OWCP and appellant was not entitled to a merit review of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board, accordingly, finds that appellant did not meet 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

CONCLUSION

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).

⁶ *Id.* at § 10.608(a), (b).

⁷ *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

⁸ *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *R.P.*, Docket No. 20-0661 (issued April 14, 2021); *D.P.*, Docket No. 13-1849 (issued December 19, 2013).

⁹ *Id.*

¹⁰ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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