

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

J.P., Appellant)
and) Docket No. 25-0889
U.S. POSTAL SERVICE, HIBISCUS CARRIER)
ANNEX POST OFFICE, Miami, FL, Employer)
Issued: December 5, 2025
)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 16, 2025 appellant filed a timely appeal from a May 15, 2025 merit decision and a May 29, 2025 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 a left foot condition causally related to the accepted factors of his federal employment; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 29, 2025 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.*

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 October 24, 2024 appellant, then a 61-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a tear of his left foot plantar plate under the middle toe, due to factors of his federal employment. He recounted that he had walked a great deal as a city carrier for over 27 years. Appellant noted that he first became aware of his condition on June 14, 2024, and realized its relation to his federal employment on September 20, 2024. He stopped work on October 22, 2024.

In a development letter dated October 31, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a letter of the same date, it requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to provide the requested information.

In a report dated October 17, 2024, Dr. Bobak Manesh, a podiatrist, diagnosed left foot second metatarsophalangeal joint (MPJ) plantar plate tear. He attributed the diagnosed condition to excessive ambulation, which he explained was "likely secondary" to appellant's mail carrier duties.

In a follow-up letter dated December 6, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the October 31, 2024 letter to submit the requested necessary evidence. OWCP further advised that if the evidence was not received during this time frame, it would issue a decision based on the evidence contained in the record. No additional evidence was submitted.

In a decision dated January 17, 2025, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical condition and the accepted factors of his federal employment.

On May 9, 2025 appellant requested reconsideration.

By decision dated May 15, 2025, OWCP denied modification.

On May 27, 2025 appellant requested reconsideration.

OWCP received clinic notes dated February 13, 2025 from Matt Dzwonkiewza, a certified physician assistant, who diagnosed left foot hyperkeratosis, bilateral plantar fasciitis, and left foot second MPJ pre-dislocation syndrome. He attributed appellant's diagnosed conditions to the repeated stress on his foot from walking at work, without another traumatic event, and the lack of time to heal/rest which prevented improvement.

OWCP also received a February 13, 2025 left foot magnetic resonance imaging (MRI) scan which reported nonspecific subchondral cystic changes at the medial cuneiform.

By decision dated May 29, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based upon a complete factual and medical background, 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.⁹

³ *Id.*

⁴ See *B.E.*, Docket No. 24-0614 (issued July 12, 2024); *S.F.*, Docket No. 23-0264 (issued July 5, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.E.*, *id.*; *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *B.E.*, *id.*; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *B.E.*, *id.*; *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁸ *B.E.*, *id.*; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *B.E.*, *id.*; *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted factors of his federal employment.

OWCP received an October 17, 2024 report from Dr. Manesh diagnosing left foot second MPJ plantar plate tear. He attributed the diagnosed condition to excessive ambulation “likely” secondary to his mail carrier duties. The Board has held that medical evidence should offer a medically-sound and rationalized explanation by the physician of how employment duties physiologically caused or aggravated the diagnosed conditions.¹⁰ Dr. Manesh did not provide a rationalized opinion that appellant’s diagnosed condition was physiologically caused by the accepted work factors. The Board has explained that the term “likely” caused is speculative and fails to meet the standard for an opinion based on reasonable medical certainty.¹¹ This report from Dr. Manesh therefore insufficient to establish causal relationship.

As the medical evidence of record is insufficient to establish causal relationship between appellant’s diagnosed left foot condition and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

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 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 or her own motion or on application.¹²

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.¹³

¹⁰ *S.R.*, Docket No. 24-0839 (issued October 30, 2024); *S.B.*, Docket No. 24-0064 (issued February 28, 2024); *T.L.*, Docket No. 23-0073 (issued January 9, 2023); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹¹ *S.R.*, *id.*; *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹³ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ 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.¹⁶

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a 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).¹⁷

The underlying issue in this case is whether appellant has met his burden of proof to establish a left foot condition causally related to the accepted factors of his federal employment. On reconsideration, appellant submitted clinic notes dated February 13, 2025 from Mr. Dzwonkiewza, a physician assistant. However, while this evidence is new, it is not relevant or pertinent to the underlying issue as the Board has held that certain healthcare providers, such as physician assistants, are not considered physicians as defined under FECA.¹⁸ Consequently, their medical findings and/or opinion will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹ Appellant also submitted a left foot MRI scan interpretation dated February 13, 2025. Although new, the Board has also held that standing alone diagnostic studies lack probative value

¹⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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). *See also* Chapter 2.1602.4b.

¹⁵ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *B.A.*, Docket No. 25-0622 (issued August 2, 2024); *J.H.*, Docket No. 23-0485 (issued November 13, 2023); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁸ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also* *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁹ *Id.*

on the issue of causal relationship.²⁰ The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²¹ Because appellant did not provide any relevant and pertinent new evidence, he is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that as appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left foot condition 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).

²⁰ *C.S.*, Docket No. 25-0502 (issued June 3, 2025); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²¹ *See K.H.*, Docket No. 25-0242 (issued March 4, 2025); *O.A.*, Docket No. 22-1350 (issued May 24, 2023); *A.M.*, Docket No. 20-1417 (issued July 30, 2021); *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 15 and 29, 2025 are affirmed.

Issued: December 5, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board