

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

A.K., Appellant

and

**U.S. POSTAL SERVICE, POLYTECHNIC
STATION, Fort Worth, TX, Employer**

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**Docket No. 25-0228
Issued: February 4, 2025**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 8, 2025 appellant filed a timely appeal from a July 29, 2024 merit decision and an August 28, 2024 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 her burden of proof to establish a recurrence of the need for medical treatment commencing October 21, 2020, causally related to her accepted

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 28, 2024 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.*

employment injury; and (2) 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 August 27, 2009 appellant, then a 26-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral foot pain due to factors of her federal employment, including repetitive walking and standing while on her route.³ She noted that she first became aware of her condition on February 11, 2006 and realized its relationship to her federal employment on August 17, 2009. Appellant did not stop work. OWCP accepted the claim for bilateral plantar fibromatosis and left-sided tarsal tunnel syndrome.⁴

On November 14, 2013 appellant underwent OWCP-authorized surgery to her left foot performed by Dr. Ian Reynolds, a Board-certified orthopedic surgeon, including left tarsal tunnel release. Postoperatively, she underwent physical therapy and injections and was prescribed medications.

In a report dated January 25, 2017, Dr. Christopher Mann, a Board-certified occupational medicine specialist, noted that appellant related complaints of bilateral swelling of the feet with painful arches and left forefoot weakness. He documented physical examination findings and diagnosed bilateral plantar fibromatosis and left tarsal tunnel syndrome. Dr. Mann recommended physical therapy and work restrictions.

On February 15, 2018 OWCP referred appellant, the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Jack H. Henry, a Board-certified orthopedic surgeon, for a second opinion evaluation.

A functional capacity evaluation (FCE) obtained from a physical therapist on March 21, 2018 indicated that appellant had no difficulty with walking, standing, or climbing stairs.

In a report dated April 11, 2018, Dr. Henry noted appellant's history and complaints. He performed a physical examination of the feet, where he observed normal sensation, strength, and reflexes. Dr. Henry also documented that appellant was able to perform heel walk and toe walk without difficulty. He opined that she was not in need of any further treatment for the accepted employment conditions.

³ OWCP assigned the present claim OWCP File No. xxxxxx133. Appellant previously filed a November 28, 2008 traumatic injury claim (Form CA-1), which OWCP accepted for lumbar sprain under OWCP File No. xxxxxx432. She also filed subsequent CA-2 forms for bilateral hand pain and bilateral shoulder, neck, and back pain, due to repetitive work duties, which OWCP accepted for bilateral carpal tunnel syndrome and hand tenosynovitis under OWCP File No. xxxxxx147, and bilateral incomplete rotator cuff tears and glenoid labrum lesions and cervical and lumbar sprains under OWCP File No. xxxxxx629, respectively. On January 25, 2018 OWCP administratively combined OWCP File Nos. xxxxxx432, xxxxxx147, xxxxxx629, and xxxxxx133, with the latter serving as the master file.

⁴ Appellant thereafter stopped work from April 27 through June 9, 2010; June 18, 2010 through August 2, 2011; and February 1, 2013 through March 11, 2014. She returned to full-time work with restrictions on March 12, 2014.

On May 16, 2018 appellant forwarded Dr. Henry's report to Dr. Mann for his review and comment.

In a report dated May 25, 2018, Dr. Mann reviewed Dr. Henry's report and noted that appellant related that she had bid for a route and felt that she could return to full-duty work within about two to three months. He suggested that she undergo an FCE.

On June 3, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging that she required medical treatment from October 21, 2020 onward due to her accepted employment injury. She noted that "about three weeks ago, I started experiencing the same symptoms as I have in the past when dealing with my feet."

In support of her claim, appellant submitted a statement dated June 3, 2024, which indicated that her medical care was interrupted during the COVID-19 pandemic, and that she wished to continue treatment. She related that she was experiencing "the same symptoms from having bilateral plantar fibromatosis and tarsal tunnel syndrome."

OWCP also received documentation that appellant was seen by Dr. Mann on October 21, 2020.

In a recurrence development letter dated June 12, 2024, OWCP informed appellant of the deficiencies of her claim. It notified her of the additional evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence. No further evidence was received within the time allotted.

By decision dated July 29, 2024, OWCP denied appellant's recurrence claim, finding that the evidence of record was insufficient to establish a worsening of the accepted work-related conditions requiring further medical treatment.

On August 26, 2024 appellant requested reconsideration of OWCP's July 29, 2024 decision. In support of her request, she submitted a statement which indicated that she had been unable to undergo medical care because her case was closed. Appellant reiterated that she was experiencing the same pain, which was dull, aching, stabbing, and sharp. She noted that her job duties consisted of excessive walking and standing and also that the pain and discomfort had significantly increased over the last six months.

By decision dated August 28, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician

that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.⁵

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁶ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁷

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.⁸ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁹ Where no such rationale is present, medical evidence is of diminished probative value.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment commencing October 21, 2020, causally related to her accepted employment injury.

On June 3, 2024 appellant filed a Form CA-2a due to foot pain since October 21, 2020, which had worsened over the last three weeks. The record contains a series of reports by Drs. Reynolds, Henry, and Mann dated from November 14, 2013 through May 25, 2018, respectively. As these reports predate the commencement date of the claimed recurrence, the Board finds that they are of no probative value and are insufficient to establish appellant's claim.¹¹

In support of her claim, appellant submitted documentation that she was seen for an office visit by Dr. Mann on October 21, 2020. However, the document does not contain any further information, such as a history, physical examination findings, diagnosis, or treatment given or recommended for the claimed injury, or a rationalized medical opinion that she sustained a

⁵ 5 U.S.C. § 8103(a).

⁶ 20 C.F.R. § 10.5(y).

⁷ *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁸ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also S.W.*, Docket No. 21-1094 (issued April 18, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁹ *S.W.*, *id.*; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

¹⁰ *S.W.*, *id.*; *M.P.*, *supra* note 7; *Michael Stockert*, 39 ECAB 1186 (1988).

¹¹ *See X.M.*, Docket No. 22-0271 (issued February 28, 2023); *S.E.*, Docket No. 21-1230 (issued January 27, 2023); *E.B.*, Docket No. 17-0875 (issued December 13, 2018); *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

recurrence of a medical condition that is causally related to her accepted employment injury without intervening cause.¹² The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Therefore, this evidence is insufficient to establish that she sustained a recurrence of a medical condition commencing October 21, 2020 causally related to her accepted employment injury.¹⁴

It is appellant's burden of proof to submit evidence establishing that she required further medical treatment for her accepted foot conditions on or after October 21, 2020 as a result of her accepted employment injury.¹⁵ As she has not submitted any medical evidence showing a recurrence of medical condition due to her accepted October 21, 2020 employment injury, the Board finds that she has not met her burden of proof.¹⁶

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹⁷ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁸ 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.¹⁹

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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

¹² See 20 C.F.R. § 10.330.

¹³ See *A.M.*, Docket No. 24-0413 (issued July 31, 2024); *J.M.*, Docket No. 23-0457 (issued September 14, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Supra* note 9.

¹⁵ *C.B.*, Docket No. 19-0121 (issued July 2, 2019); *E.G.*, Docket No. 18-1383 (issued March 8, 2019); see also *C.J.*, Docket No. 18-1181 (issued May 20, 2019); *A.L.*, Docket No. 16-1092 (issued May 9, 2017); *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁶ See *C.B.*, *id.*; *E.R.*, *supra* note 7.

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.607.

¹⁹ *Id.* at § 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 OWCP's 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.

considered by OWCP.²⁰ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²¹

ANALYSIS -- ISSUE 2

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

Appellant submitted a statement as to her delay in treatment. However, she has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²²

In support of her request for reconsideration, appellant also did not submit any relevant and pertinent new medical evidence not previously considered by OWCP. The underlying issue on reconsideration is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment due to her accepted February 11, 2006 employment injury. This is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.²³ Thus, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁴

The Board, therefore, finds that appellant has not met 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment on or after October 21, 2020, causally related to her accepted employment injury. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

²⁰ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

²¹ *Id.* at § 10.608.

²² *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²³ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

²⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 29 and August 28, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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