

ISSUE

The issue is whether 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 January 25, 2022 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2022 he sustained a left foot condition while driving in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on January 13, 2022.

By decision dated May 11, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not established that his diagnosed left foot condition was causally related to the accepted employment incident.

OWCP continued to receive medical evidence. In a report dated May 3, 2022, Dr. Justin Guiliana, a podiatric surgeon, noted appellant's physical examination findings and assessed bilateral pes planus, and posterior tibial tendon dysfunction (PTTD) of the left lower extremity. A work status note of even date, signed by Dr. Guiliana, held appellant off work until May 18, 2022. A May 17, 2022 work status note, from Dr. Guiliana, held appellant off work for another four weeks.

On June 27, 2022 appellant requested reconsideration. In support thereof, he submitted a progress note dated May 17, 2022 from Dr. Guiliana. Dr. Guiliana noted that appellant continued to relate pain in medial and lateral side on both feet which traveled to the posterior of the heel. He assessed PTTD of left lower extremity and posterior tibial tendinitis in the right leg. Dr. Guiliana found that appellant's pain had not improved since January 2022 and that appellant had a flatfoot bilaterally, but he did not have any associated pain. He opined that appellant's increased workload and the position he was in while driving his truck put increased strain on the tendons of both feet, and he indicated that putting too much strain on the tendons caused inflammation. Dr. Guiliana opined that this was a work-related injury.

In a June 14, 2022 report, Dr. Guiliana related appellant's complaints of only minimal pain relief from the custom inserts he obtained. Dr. Guiliana assessed PTTD of left lower extremity, posterior tibial tendinitis in the right leg, and pes planus of both feet. In a work status note of even date, Dr. Guiliana held appellant off work pending reevaluation.

On August 24, 2022 appellant was seen by Dr. John J. Stapleton, a podiatrist. Appellant related severe pain and that he was using an ankle brace, high-top shoe, and cane. Dr. Stapleton reviewed appellant's August 16, 2022 magnetic resonance imaging (MRI) scan of the left ankle and assessed left foot pain and PTTD of left lower extremity. Appellant was scheduled to undergo surgery on September 13, 2022 to repair the posterior tibial tendon. A work status note dated July 11, 2022 by Dr. Stapleton held appellant off work pending an MRI scan and reevaluation.

Appellant submitted a January 17, 2022 report, wherein Dr. John Brinker, an osteopathic family medicine specialist, assessed left foot pain.

By decision dated September 15, 2022, 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.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ 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.⁵ 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.⁶ When a timely application 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.⁷

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

In support of his reconsideration request, appellant submitted several new medical reports, including a progress note dated May 17, 2022 from Dr. Guiliana. Dr. Guiliana assessed posterior tibial tendinitis of the right leg. He opined that appellant's increased workload and the position he drove his truck in put increased strain on the tendons of both feet. Dr. Guiliana also indicated that placing too much strain on the tendons caused inflammation. He opined that this was a work-related injury.

The Board finds that the May 17, 2022 progress note from Dr. Guiliana constitutes relevant and pertinent new evidence, because it specifically addresses the underlying medical issue in this

³ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ *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.

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

case, *i.e.*, whether the medical evidence of record is sufficient to establish a medical condition causally related to the accepted January 13, 2022 employment incident. Therefore, the submission of this evidence requires reopening of his claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).⁸ Accordingly, the Board will set aside OWCP's September 15, 2022 decision, and remand the case for an appropriate merit decision on appellant's claim.⁹

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2022 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 2, 2023
Washington, DC

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

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

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

⁸ *M.P.*, Docket No. 20-0948 (issued August 11, 2022); *M.R.*, Docket No. 19-1449 (issued March 11, 2020); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

⁹ *Id.*