

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

K.R., Appellant	)	
	)	
and	)	Docket No. 24-0585
	)	Issued: July 10, 2024
DEPARTMENT OF THE ARMY, U.S. ARMY-	)	
TANK AUTOMOTIVE & ARMAMENTS	)	
COMMAND, RED RIVER ARMY DEPOT,	)	
Texarkana, TX, Employer	)	
	)	

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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 9, 2024 appellant filed a timely appeal from a January 26, 2024 merit decision and a February 27, 2024 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the February 27, 2024 nonmerit 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish bilateral plantar fasciitis causally related to the accepted factors of her federal employment; 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 November 21, 2023 appellant, then a 54-year-old painter, filed an occupational disease claim (Form CA-2) alleging that she developed plantar fasciitis due to factors of her federal employment. She related that her employment duties required prolonged standing, kneeling, walking, squatting, and pivoting. Appellant noted that she first became aware of her condition and realized its relation to factors of her federal employment on October 11, 2023. She did not stop work.

In an October 20, 2023 visit note, Dr. Timothy Beck, a Board-certified orthopedic surgeon, related that appellant was seen for bilateral foot pain. He noted appellant's factors of employment, her current symptoms, and provided examination findings. Dr. Beck also recounted that appellant attributed her pain to walking and standing on a concrete floor. He diagnosed bilateral foot joint pain and bilateral plantar fasciitis.

In a development letter dated November 22, 2023, OWCP noted receipt of appellant's claim and that no documentation had been received with her claim. It informed her of the deficiencies of her claim. OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. It afforded appellant 60 days to submit the requested evidence.

In a follow-up letter dated December 21, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the November 22, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated January 26, 2024, OWCP found that the evidence of record was sufficient to establish the implicated employment factors. However, it denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed bilateral plantar fasciitis and the accepted factors of her federal employment.

Thereafter OWCP received a December 1, 2023 return to work/school note form from Dr. Beck stating appellant had been seen in his office that day.

In a note dated February 19, 2024, M.A., a representative of a medical clinic, noted appellant had been seen that day for her workers' compensation claim.

On February 20, 2024 appellant requested reconsideration.

By decision dated February 27, 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**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (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 employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>10</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *D.F.*, Docket No. 24-0078 (issued April 24, 2024); *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

<sup>5</sup> *D.F.*, *id.*; *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>6</sup> *D.F.*, *id.*; *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

<sup>7</sup> *D.F.*, *id.*; *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *D.F.*, *id.*; *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.F.*, *id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *D.F.*, *id.*; *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 7.

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish bilateral plantar fasciitis causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted an October 20, 2023 visit note from Dr. Beck diagnosing bilateral foot joint pain and bilateral plantar fasciitis. He noted that appellant attributed her condition to walking and standing on a concrete floor. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.<sup>11</sup> The Board has also held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. Dr. Beck merely reported appellant's own belief regarding the cause of her foot conditions and did not provide his own opinion relative to causal relationship.<sup>12</sup> As such, Dr. Beck's note is insufficient to establish appellant's claim.<sup>13</sup>

As the medical evidence of record is insufficient to establish causal relationship between appellant's bilateral plantar fasciitis and the accepted factors of federal employment, the Board finds that appellant has not met her burden of proof.<sup>14</sup>

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 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.<sup>15</sup>

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

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<sup>11</sup> See *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *B.T.*, Docket No. 22-0022 (issued May 23, 2022); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

<sup>12</sup> See *R.M.*, Docket No. 19-1613 (issued July 13, 2020); *A.L.*, Docket No. 18-1016 (issued May 6, 2020) (finding that entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship).

<sup>13</sup> See *T.S.*, *supra* note 11; *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> See *T.S.*, *id.*; *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

<sup>15</sup> 5 U.S.C. § 8128(a); see *R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>16</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>17</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>18</sup> 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.<sup>19</sup>

### 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).

In connection with her February 20, 2024 reconsideration request, appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law.<sup>20</sup> Moreover, she did not advance a relevant legal argument not previously considered by OWCP. 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).<sup>21</sup>

Furthermore, appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. On reconsideration, she submitted a December 1, 2023 return to work/school note form from Dr. Beck and a February 19, 2024 note from a clinic, which was signed by M.A. While this evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether she has established a causal relationship between her diagnosed conditions and the accepted factors of her 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.<sup>22</sup> Therefore, the above evidence does not constitute relevant and pertinent new evidence not previously considered by OWCP and appellant was not entitled to

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<sup>16</sup> 20 C.F.R. § 10.606(b)(3); *see R.C., id.; L.D., id.*

<sup>17</sup> *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). *Id.* at Chapter 2.1602.4b.

<sup>18</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>19</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>20</sup> *T.S.*, *supra* note 11; *K.G.*, Docket No. 22-1358 (issued June 27, 2023).

<sup>21</sup> *See T.S., id.; L.W.*, Docket No. 21-0607 (issued October 18, 2022).

<sup>22</sup> *H.J.*, Docket No. 23-0911 (issued January 3, 2024); *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); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

a merit review of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>23</sup>

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.<sup>24</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish bilateral plantar fasciitis causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26 and February 27, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 10, 2024  
Washington, DC

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

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

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

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<sup>23</sup> *Id.*

<sup>24</sup> *See H.J., id.; 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).