

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

B.E., Appellant)	
)	
and)	Docket No. 24-0614
)	Issued: July 12, 2024
DEPARTMENT OF THE NAVY, TRIDENT)	
REFIT FACILITY, Bangor, WA, 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 19, 2024 appellant filed a timely appeal from a November 29, 2023 merit decision and a December 13, 2023 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 foot condition causally related to the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 13, 2023 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.*

FACTUAL HISTORY

On August 31, 2023 appellant, then a 52-year-old marine machinery mechanic supervisor 1, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral foot plantar fasciitis and equinus with chronic pain due to factors of his federal employment including standing for long periods of time in awkward positions on uneven surfaces. He noted that he first became aware of his condition, and realized its relation to his federal employment on May 3, 2005. On the reverse side of the claim form, the employing establishment noted that there was no medical evidence linking the claimed injury to work.

In an undated statement, appellant indicated that he believed that his condition of long-term plantar fasciitis was a direct result of his work. He explained that the pain started in his left heel approximately 12 years ago and increased to an intolerable level. Appellant also recounted that his right toes began to hurt, and his physician indicated that he had a tight Achilles tendon and a broken fifth metatarsal. While he related that he initially believed his conditions were congenital, appellant now realized that his conditions were worsened by factors of his federal employment including overuse and poor walking/standing conditions.

In support of his claim, appellant submitted progress notes from Dr. David M. Gent and Dr. Allan K. Doan, both podiatrists, dated July 2, 2015 through August 19, 2023. In the July 2, 2015 note, his diagnosis was listed as plantar fascial fibromatosis. In August 17, 2017 treatment notes, an assessment was made of plantar fascial fibromatosis, congenital *pes cavus*, and other acquired deformities of the left foot. In the September 18, 2017 notes, peroneal tendinitis of the left leg was assessed, in addition to the prior diagnoses. August 22, 2018 notes related diagnoses of disorder of ligament, left foot; and osteophyte, left foot. In April 6, 2020 notes, Dr. Gent diagnosed disorder of ligament, left foot; and contusion of left foot, initial encounter.

In a January 22, 2021 surgery note, Dr. Gent related that appellant underwent endoscopic plantar fascia release (EPFR), left; peroneal tendon repair, left; and tarsal tunnel decompression, left.

In February 1, 2021 notes, Dr. Gent noted that appellant was postsurgical status for EPFR, left; peroneal tendon repair, left; tarsal tunnel decompression, left; and reconstructive surgery. He diagnosed calcaneal spur, left foot; peroneal tendinitis, left leg; plantar fascial fibromatosis; and tarsal tunnel syndrome, left lower limb.

In November 30, 2022 notes, Dr. Gent noted that appellant was at work when he heard a “pop” in his right foot as he was ascending a ladder, and since then his pain had increased. He diagnosed contusion of right foot, initial encounter, and metatarsalgia, right foot. In December 12, 2022 notes, appellant was seen for follow up of right foot pain, originally from an injury ascending a ladder. He diagnosed contusion of right foot, initial encounter, and pain in the right foot.

In January 10, 2023 notes, Dr. Gent noted that appellant continued to complain of pain, and diagnosed displaced fracture of fifth metatarsal bone, right foot, initial encounter for closed fracture and pain in right foot.

Dr. Joseph Barrett, a podiatrist, saw appellant on July 7, 2023 and diagnosed displaced fracture of fifth metatarsal bone of the right foot, initial encounter for closed fracture; contusion of right foot, initial encounter; metatarsalgia, right foot; and pain in right foot.

In July 17, 2023 notes, Dr. Gent related an impression of metatarsalgia of the right foot, displaced fracture of the fifth metatarsal bone right foot, subsequent encounter for fracture with nonunion; displaced fracture of second metatarsal bone right foot, initial encounter for closed fracture; and short Achilles tendon, (acquired) right ankle.

In a development letter dated September 13, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a September 20, 2023 report, Dr. Gent opined that appellant had a lot of foot problems associated with his work and work environment. He related that appellant had chronic plantar fasciitis pain of the feet that appellant had dealt with for years while working in the shipyard. Dr. Gent noted that “the issues of the feet had progressed to stress fractures of the forefoot and full displaced fractures of the metatarsals.” He related that appellant had undergone conservative treatment and surgeries to address the issues of the “feet break down” from work. Dr. Gent further noted that appellant had been a regular patient and worked hard to remain a strong employee and fully engaged with his job.

In a follow-up letter dated October 6, 2023, 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 September 13, 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.

In a November 6, 2023 report, Dr. Gent recounted that appellant had a lot of foot problems associated with his work and work environment. He explained that the work appellant performed on ships and submarines with stairs, ladders, and hard deck surfaces created a lot of wear and tear on the feet that originally was associated with plantar fasciitis, but progressed to stress fractures of the metatarsals and forefoot issues. Dr. Gent noted that the long periods of standing in one place, as well as balancing on small surfaces, created complications in the feet. He explained that appellant’s conditions progressed over the years, and that he had been treating appellant due to the wear and tear of the job duties.

By decision dated November 29, 2023, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted factors of his federal employment. It explained that the treating physicians did not specifically state which conditions were associated with appellant’s claim.

On December 8, 2023 appellant requested reconsideration. No additional argument or evidence was received.

By decision dated December 13, 2023, 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

ANALYSIS -- ISSUE 1

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

In support of his claim appellant submitted numerous progress reports dated July 2, 2015 from Dr. Gent, Dr. Doan, and Dr. Barrett, who provided multiple diagnoses of appellant's bilateral foot conditions. However, none of these reports offered an opinion on the issue of causal relationship. The Board has held that a medical report that does not contain a medical opinion

³ *Supra* note 1.

⁴ *See 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 *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 *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 *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 *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

addressing causal relationship is of no probative value.¹⁰ Thus, this evidence is insufficient to establish appellant's claim.

In a September 20, 2023 report, Dr. Gent opined that appellant's foot conditions were associated with his work and work environment. He explained that appellant had chronic plantar fasciitis from working in the shipyard which progressed to stress fractures of the forefoot and full displaced fractures of the metatarsals. Dr. Gent indicated that appellant experienced "feet break down" from work. In a November 6, 2023 report, he further explained that appellant worked on ships and submarines with stairs, ladders and hard deck surfaces that created a lot of wear and tear on the feet, originally associated with plantar fasciitis and progressed to stress fractures of the metatarsals and forefoot issues. Dr. Gent opined that the long periods of standing in one place, as well as balancing on small surfaces, created complications in the feet and a progression of issues due to the wear and tear of the job duties. However, he failed to explain with medical rationale how or why appellant's foot conditions were caused or aggravated by the accepted employment factors. The Board has held that medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused the diagnosed condition.¹¹ This evidence is therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a foot condition and the accepted factors of federal employment, the Board finds that appellant 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(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.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

¹⁰ *W.O.*, Docket No. 22-0418 (issued February 15, 2023); *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *see also J.B.*, Docket No. 22-0872 (issued August 22, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *O.R.*, Docket No. 24-0184 (issued February 27, 2024); *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).

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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

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).

In support of his December 8, 2023 request for reconsideration, appellant did not argue that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit any relevant and pertinent new medical evidence with his request for reconsideration. Therefore, he is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, thus, 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 established that he sustained a foot condition causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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).

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). *Id.* at 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).

ORDER

IT IS HEREBY ORDERED THAT the November 29 and December 13, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 12, 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