

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

E.R., Appellant)	
)	
and)	Docket No. 24-0805
)	Issued: September 24, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
San Antonio, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 1, 2024 appellant filed a timely appeal from a June 10, 2024 merit decision and a July 22, 2024¹ nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left foot condition causally related to the accepted February 29, 2024 employment incident; 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 Appellant mistakenly referred to OWCP's July 22, 2024 decision as a July 12, 2024 decision.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 5, 2024 appellant, then a 40-year-old postal carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on February 29, 2024 he fractured his left foot when climbing off and on an employing establishment vehicle which had no sidestep, while in the performance of duty. He stopped work on February 29, 2024. Appellant returned to part-time work for four hours a day, without restrictions, on March 25, 2024.

Appellant's February 29, 2024 left foot x-ray revealed acute fractures of the fourth and fifth proximal phalanx.

OWCP received a February 29, 2024 report, a duty status report (Form CA-17) of even date, and a March 1, 2024 work activity status report from Luann Bruce, a nurse practitioner. In her February 29, 2024 report, Ms. Bruce noted appellant's history of injury and diagnosed left foot sprain of unspecified muscle and tendon of long extensor muscle of toe at ankle/foot level, cellulitis of left foot, closed fracture of left fourth toe, and closed fracture of left fifth toe. She released appellant to work with restrictions, which included wearing a splint/cast. OWCP also received an illegible February 29, 2024 work activity status report and an illegible February 29, 2024 Form CA-17.

In a March 1, 2024 report, Dr. Terren Klein, a Board-certified orthopedic surgeon, reported that on February 29, 2024 appellant, a letter carrier, injured his left foot after repetitively getting on and off a vehicle. He provided examination findings and indicated that appellant was limited to light-duty work. Dr. Klein diagnosed strain of left foot, resolving cellulitis of left foot, fracture of the fourth toe, left foot, and fracture of the proximal phalanx of the left little toe. He provided work restrictions in a May 1, 2024 Form CA-17.

In a March 11, 2024 development letter, OWCP advised appellant regarding the type of medical evidence needed to establish his claim and afforded him 60 days to submit the necessary evidence.

OWCP thereafter received duplicative evidence previously of record. Appellant also submitted additional evidence, including reports from Ms. Bruce.

In work activity status reports, dated March 1, 18, 22, and April 17, 2024, Dr. Klein diagnosed left foot strain, resolving cellulitis, and fractures of fourth and fifth left toes. He also provided work restrictions. A March 22, 2024 Form CA-17 from Dr. Klein was also received which repeated his work restrictions.

In March 18 and April 1, 2024 reports, Dr. Enrique Porrás, a Board-certified internist, reported that appellant, a mail carrier, had been working modified duty, and presented for a follow up of his left foot strain and fracture of fourth and fifth toes, with related pain and impediments. He noted that on February 29, 2024 appellant was driving a higher off the ground vehicle from which he had to frequently get in and out to make deliveries. Appellant noticed pain to his left foot in the morning, but continued to work. When he examined his foot, his left fourth and fifth toes were back and blue with redness extending to the lateral foot. Dr. Porrás noted that appellant had Type 1 diabetes mellitus. He diagnosed cellulitis of left foot, fractures of left fourth and fifth

toes, and left foot strain. Dr. Porrás also provided work restrictions. CA-17 forms from Dr. Porrás dated March 18, April 1, and 22, 2024 were also submitted.

In a follow-up letter dated April 19, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that the evidence submitted did not include a detailed description of his claimed work factors, nor a physician's opinion as to how his employment activities caused, contributed to, or aggravated his medical condition. OWCP further noted that he had 60 days from the date of the March 11, 2024 development letter to submit the requested supporting evidence. It 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 an April 17, 2024 report, Dr. Klein continued to diagnose left foot sprain; fractures of the fourth and fifth left toes; and fracture proximal phalanx, left little toe. He opined that appellant could return to full duty.

In an April 22, 2024 report, Dr. Porrás diagnosed cellulitis of left foot, left foot sprain, fractures of fourth and fifth left toes, and fracture proximal phalanx, left little toe. He opined that appellant could work full duty and released him from care. In an April 22, 2024 Form CA-17, Dr. Porrás provided restrictions.

By decision dated May 17, 2024, OWCP denied appellant's traumatic injury claim. It factually accepted that he had climbed in and out of his vehicle on February 29, 2024, but found that the medical evidence of record was insufficient to establish that his diagnosed left foot conditions were causally related to the accepted February 29, 2024 work incident.

On June 3, 2024 appellant requested reconsideration.

OWCP received additional reports from Ms. Bruce, as well as progress reports and CA-17 forms from Dr. Klein.

In a May 17, 2024 report, Dr. Klein continued to diagnose left foot sprain; fracture of fourth and fifth left toes; and fracture proximal phalanx, left little toe. He took appellant off work because of his diabetes, and a possible diabetic foot infection.

An illegible attending physician's report (Form CA-20) dated May 31, 2024 from Dr. Klein was also received.

By decision dated June 10, 2024, OWCP denied modification of its May 17, 2024 decision.

On July 12, 2024 appellant requested reconsideration. OWCP continued to receive medical evidence.

In a February 29, 2024 report, Dr. Lucia M. Robies, a Board-certified family practitioner, reported that on February 29, 2024 appellant, a mail carrier, was working in a higher off the ground vehicle, and that he had to frequently get in and out of his vehicle to make his deliveries. Appellant noticed left foot pain in the morning, but continued to work. When he examined his foot, his left fourth and fifth toes were back and blue with redness extending to the lateral foot. Dr. Robies

noted that appellant had Type 1 diabetes mellitus. She noted appellant's physical examination findings, and provided an assessment of left foot strain, left foot cellulitis, and closed left foot fractures of the fourth and fifth toes.

A March 1, 2024 illegible report from Dr. Klein was received.

By decision dated July 22, 2024, 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *Id.*

⁴ *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.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.⁹

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 February 29, 2024 employment incident.

Appellant submitted several reports from Dr. Klein and Dr. Porras, which diagnosed fractures of the left fourth and fifth toes, fracture of proximal phalanx of the left little toe, strain of left foot, and cellulitis of left foot in various stages and provided work restrictions. Dr. Porras also noted that appellant had Type 1 diabetes mellitus. Both physicians noted appellant's history of injury that on February 29, 2024 he had to repetitively get on and out his delivery vehicle, which was higher off the ground than usual when he experienced foot pain. However, neither physician provided a medical opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.¹⁰ This evidence is, therefore, insufficient to establish appellant's claim.

The Board notes that appellant also submitted illegible reports. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹¹ These reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted reports from a nurse practitioner. The Board has held, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.¹² This evidence is, therefore, of no probative value and is insufficient to establish the claim.

⁹ *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

¹⁰ *R.R.*, Docket No. 24-0624 (issued July 29, 2024); *G.L.*, Docket No. 24-0366 (issued May 17, 2024); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *E.B.*, Docket No. 24-0471 (issued June 11, 2024); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹² *C.S.*, Docket No. 23-0865 (issued May 14, 2024) (the reports of nurse practitioners do not constitute competent medical evidence). Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *E.H.*, Docket No. 23-0373 (issued July 7, 2023) (nurse practitioners are not considered physicians as defined under FECA); *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).

OWCP also received a February 29, 2024 x-ray report of appellant's left foot. However, the Board has also held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).¹³

As the medical evidence of record is insufficient to establish causal relationship between a left foot condition and the accepted February 29, 2024 employment incident, 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 own motion or on application.¹⁴

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.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ If the request is timely but fails to meet at least one of the

¹³ *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

¹⁴ 5 U.S.C. § 8128(a); *see C.V.*, Docket No. 22-0078 (issued November 28, 2022); *see also 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).

¹⁵ 20 C.F.R. § 10.606(b)(3); *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

¹⁷ *Id.* at § 10.608(a); *see also D.B.*, Docket No. 22-0518 (issued November 28, 2022); *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁸

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 shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Consequently, he 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).¹⁹

In support of his request for reconsideration, appellant submitted a February 29, 2024 report from Dr. Robies, who noted the history of appellant's February 29, 2024 work incident and provided assessments of left foot strain, left foot cellulitis, and closed left foot fractures of the fourth and fifth toes. However, as Dr. Robies did not provide an opinion regarding causal relationship, this report, while new, is irrelevant to the underlying issue of causal relationship. The Board has held that the submission of evidence or argument which does not address the particular issue involved, does not constitute a basis for reopening a case.²⁰ Appellant has not provided relevant and pertinent new evidence and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).

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.²¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted February 29, 2024 employment incident. 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).

¹⁸ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁹ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

²⁰ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

²¹ *E.L.*, Docket No. 24-0232 (issued April 9, 2024); *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 10 and July 22, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 24, 2024
Washington, DC

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

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

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