

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

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**SUSAN A. FILKINS, Appellant**

**and**

**DEPARTMENT OF THE INTERIOR, BUREAU  
OF LAND MANAGEMENT, Boise, ID, Employer**

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**Docket No. 06-868  
Issued: June 16, 2006**

*Appearances:*  
*Susan A. Filkins, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 1, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 22, 2005, denying her claim for stones in the ureter and kidney, and a February 2, 2006 decision, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the November 22, 2005 and February 2, 2006 decisions.

**ISSUES**

The issues are: (1) whether appellant's stones in the right ureter and kidney are causally related to her employment; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

On July 18, 2005 appellant, then a 41-year-old biological (vegetation) technician, filed a traumatic injury claim alleging that she sustained stones in the right ureter and kidney on July 13, 2005 during a two-day camping trip to document vegetation growing in the Owyhee Mountains. On July 13, 2005 she felt pain in her lower back which worsened. Appellant was transported to

an emergency room where she was diagnosed with ureter and kidney stones. The employing establishment indicated that she was on travel status on July 13, 2005.

In emergency room notes dated July 13, 2005, Dr. Thomas W. Sanderson, a Board-certified specialist in emergency medicine, stated that appellant presented with severe abdominal pain. She denied any history of kidney or gallstones. Following a physical examination and tests, she was diagnosed with right renal colic, having a three millimeter stone in the right proximal ureter and a smaller stone in the right kidney.

On October 20, 2005 the Office asked appellant to submit additional information, including a detailed medical report explaining how her work-related camping trip caused or aggravated her ureter and kidney stone condition. There was no response.

By decision dated November 22, 2005, the Office denied appellant's claim, finding that the medical evidence did not establish that her ureter and kidney stones were causally related to factors of her employment.

Appellant requested reconsideration and submitted additional evidence.

In emergency room notes dated July 15, 2005, Dr. Douglas S. Kartel, a Board-certified specialist in emergency medicine, provided a history of appellant's condition and diagnosed an acute stone in the ureter. She had been discharged from the emergency room on July 13, 2005 but returned with worsening pain. Dr. Kartel referred her to the urologist on call.

In an emergency room report dated July 15, 2005, Dr. Larry A. Tansey, a Board-certified urologist, stated that appellant was discharged from the emergency room on July 13, 2005 but returned with severe pain, nausea and vomiting. She was admitted and passed the ureter and kidney stones within her first 24 hours in the hospital and was then discharged.

In a medical report dated October 21, 2005, an emergency room physician noted that appellant had a prior history of kidney stones. Her diagnosis on July 13, 2005 was renal colic and a stone in the right ureter. The physician indicated that appellant's condition was not caused or aggravated by her employment on July 13, 2005.

By decision dated February 2, 2006, the Office denied appellant's request for reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition is causally related to factors of her employment. Where an employee is on temporary-duty assignment away from her federal employment, she is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to her temporary assignment.<sup>1</sup>

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<sup>1</sup> See *Cherie L. Hutchings*, 39 ECAB 639 (1988).

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments. Larson states as follows:

“Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.”<sup>2</sup>

However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of employment.<sup>3</sup> The medical evidence must establish a causal relationship between the condition and factors of employment.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

Appellant was in travel status at the time she felt symptoms of her ureter and kidney stone condition. However, the medical evidence does not establish that her condition was caused or aggravated by any incident or factor of her federal employment. Appellant submitted emergency room reports dated July 13, 2005 in which Dr. Sanderson diagnosed right renal colic with a three millimeter stone in the right proximal ureter and a smaller stone in the right kidney. However, he did not indicate the cause of appellant’s ureter and kidney stones. As Dr. Sanderson did not explain how appellant’s condition was causally related to activities essential to or incidental to her temporary assignment, this evidence is insufficient to establish causal relation. Therefore, the Office properly denied her claim.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act<sup>5</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

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<sup>2</sup> 1 A. Larson, *The Law of Workers' Compensation* § 25.01 (2000); see also Lawrence J. Kolodzi, 44 ECAB 818 (1993).

<sup>3</sup> See William B. Merrill, 24 ECAB 215 (1973).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

In emergency room notes dated July 15, 2005, Dr. Kartel diagnosed an acute stone in the ureter. However, he did not explain the cause of appellant's condition. As Dr. Kartel did not address the issue of causal relationship, his report does not constitute relevant and pertinent new evidence not previously considered by the Office.

In an emergency room report dated July 15, 2005, Dr. Tansey stated that appellant was admitted to the hospital on July 13, 2005, passed the ureter and kidney stones within her first 24 hours in the hospital and was then discharged. However, he did not address the issue of causal relationship. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

In an October 21, 2005 report, an emergency room physician noted that appellant had a prior history of kidney stones. Her diagnosis on July 13, 2005 was renal colic and a stone in the right ureter. The physician indicated that appellant's condition was not caused or aggravated by her employment on July 13, 2005. Therefore, this report does not constitute relevant and pertinent new evidence not previously considered by the Office on the issue of whether appellant established a causal relationship between her urological stones and her employment.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office properly denied her claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that her ureter and kidney stones were causally related to her employment. The Board further finds that the Office properly denied appellant's request for reconsideration.

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<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 2, 2006 and November 22, 2005 are affirmed.

Issued: June 16, 2006  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board