



By letter dated August 15, 2006, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a physician's opinion as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted her 30 days to submit the requested information.

In an August 30, 2006 statement, appellant alleged that the robbery was an armed robbery and that it was "very disturbing." She alleged that, while she and coworkers were trying to escape, they could not escape safely and people were run over, tumbling, screaming, crying and panicking. Appellant alleged that she sustained an anxiety attack and lost her glasses during the robbery.

By decision dated September 15, 2006, the Office denied appellant's claim. It found that the evidence supported that the claimed incident occurred; however, appellant failed to submit the sufficient medical evidence in support of her claim. It found that her medical evidence did not demonstrate that her claimed medical condition was related to the accepted incident of July 27, 2006.

Appellant requested reconsideration on October 19, 2006. By letter dated November 6, 2006, she advised the Office that she was submitting additional evidence. Appellant submitted an August 5, 2006 receipt for an eye examination by Dr. Michael D. Riesen, an optometrist, and a July 27, 2006 admission form and treatment notes from a nurse for anxiety. On September 28, 2006 she stated that she was filing a grievance. The Office also received July 27, 2006 treatment notes from a physician whose signature was illegible. The physician noted that appellant had a previous medical history of fibromyalgia and she was robbed at "gun point."

In a November 17, 2006 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantive legal questions nor included new and relevant evidence.

By letter dated February 26, 2007, appellant informed the Office that her fibromyalgia condition did not have anything to do with her claim." She noted that her physician indicated that her blood pressure was up and that was the cause of her going to the emergency room. The Office received a copy of a July 27, 2006 treatment note signed by a nurse and a billing policy statement. By letter dated March 7, 2007, the Office advised appellant that, if she wished to receive reconsideration, she must file a new request. In a March 12, 2007 telephone memorandum, the Office noted that appellant wished to have her February 26, 2007 letter adjudicated as a request for reconsideration.

In a March 30, 2007 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that it neither raised substantive legal questions nor included new and relevant evidence.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.<sup>6</sup> However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>8</sup> The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup> The medical evidence required to establish

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>5</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

<sup>6</sup> *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>7</sup> *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>8</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>9</sup> *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.<sup>10</sup>

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

Appellant alleged that on July 27, 2006 she was fleeing a robbery at the employing establishment when her blood pressure became elevated, she bruised her knee and lost her glasses. The Board finds that there is no evidence refuting that the incident occurred as alleged, by appellant. However, the medical evidence is insufficient to establish that the July 27, 2006 employment incident caused an injury. The medical reports of record do not establish that the fleeing from a robbery at work caused a personal injury on that date. Appellant did not submit any medical evidence which contained a reasoned explanation of how the employment incident on July 27, 2006 caused or aggravated an injury.<sup>11</sup>

The only evidence from a healthcare provider submitted by appellant, prior to the Office's September 15, 2006 decision was a July 27, 2006 note from a nurse. Section 8101(2) of the Act<sup>12</sup> provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Registered nurses, licensed practical nurses and physicians' assistants are not physicians as defined under the Act. Thus, their opinions are of no probative value.<sup>13</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>14</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>15</sup> Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit.

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<sup>10</sup> *Id.*

<sup>11</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> See 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>13</sup> *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005).

<sup>14</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>15</sup> *Id.*

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the July 27, 2006 work incident would have caused the claimed injury. Accordingly, she did not establish that she sustained an anxiety condition in the performance of duty. Inasmuch as appellant has not established that she sustained an employment-related injury requiring medical services, she is not entitled to have her eyeglasses replaced or repaired by the Office.<sup>16</sup> The Office properly denied her claim for compensation.

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

To require the Office to reopen a case under section 8128(a) of the Act,<sup>17</sup> section 10.608(a) of the implementing regulations provide that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>18</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>19</sup> Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>20</sup>

When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>21</sup>

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

With her October 19, 2006 and February 26, 2007 reconsideration requests, appellant repeated her previous arguments that her high blood pressure was related to the employment incident. She also alleged that she was filing a grievance. Additionally, appellant submitted an August 5, 2006 receipt for an eye examination from Dr. Riesen, a July 27, 2006 admission form

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<sup>16</sup> See 5 U.S.C. § 8101(5) (in defining the term "injury," notes that eyeglasses are not to be "replaced, repaired or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services").

<sup>17</sup> 5 U.S.C. § 8128(a).

<sup>18</sup> 20 C.F.R. § 10.608(a).

<sup>19</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>20</sup> 20 C.F.R. § 10.608(b).

<sup>21</sup> *Annette Louise*, 54 ECAB 783 (2003).

and a billing policy statement. However, these arguments and documents are not relevant and pertinent, as the issue in the present case is medical in nature. Appellant's arguments that her blood pressure was related to the incident are irrelevant as the issue can only be resolved by competent medical evidence.

The Office also received July 27, 2006 treatment notes. However, these notes are not relevant, as they do not address the issue of causal relationship. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>22</sup>

Appellant also submitted several nurses' notes. These reports are not relevant. As noted above, nurses are not physicians under the Act. Thus, a nurse is not competent to give a medical opinion.<sup>23</sup> Thus, these reports are not relevant. The Board also finds that the July 27, 2006 treatment note signed by a nurse was duplicative. It has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>24</sup>

Appellant, therefore, did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. Further, she failed to submit relevant new and pertinent evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, she was not entitled to a merit review.<sup>25</sup>

As appellant is not entitled to a review of the merits of her claim pursuant to section 10.606(b)(2), the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on July 27, 2006. It further finds that the Office properly refused to reopen her claim for merit review under 5 U.S.C. § 8128(a).

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<sup>22</sup> *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>23</sup> *See supra* note 13.

<sup>24</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

<sup>25</sup> *See James E. Norris*, 52 ECAB 93 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 30, 2007, November 17 and September 15, 2006 are affirmed.

Issued: December 3, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board