

On November 7, 2003 appellant, then a 35-year-old criminal investigator, filed a traumatic injury claim alleging that on October 28, 2003 he experienced tingling and numbness

in his left buttocks cheek as a result of bouncing up and down on a hard bench while riding in an employing establishment vehicle. L. Matthew Butler, appellant's team leader, stated that appellant reported the alleged injury to him following an extended road trip from Kuwait to Al Hillah, Iraq. He noted that appellant sat on a bench seat the entire trip.

By letter dated September 13, 2004, the Office advised appellant that his claim alone was insufficient to establish his claim. The Office further advised him to submit a detailed narrative medical report from his treating physician which contained, a diagnosis of a condition resulting from the alleged October 28, 2003 injury, an opinion as to how the alleged injury resulted in the diagnosed condition, a description of the alleged injury and all prior industrial and nonindustrial injuries to similar parts of the body and an explanation as to why the diagnosed condition caused or aggravated the claimed injury. In addition, the Office requested that the employing establishment submit any medical records pertaining to the treatment of appellant's alleged injury at its medical facility.

In response, appellant submitted an October 6, 2004 letter in which he provided the claim numbers and background information for claims he had previously filed with the Office involving injuries he sustained while stationed in Al Hillah, Iraq. Appellant stated that he did not have immediate access to a medical clinic and the nearest one was in Baghdad, Iraq which one did not travel to unless he was dying due to inherent dangers such as, ambushes and explosive devices. He identified his team members which included his supervisor, Mr. Butler, and stated that he submitted notices of injury to Mr. Butler within the specified time frame and that Mr. Butler submitted them to the employing establishment's headquarters. Appellant further stated that in June or July 2004 he was notified that his claim forms were never received by the Office and that he resubmitted them to the employing establishment. After receiving notification from the Office that his notices of injury had been received, appellant made the required appointment with his physician. Appellant indicated that he wished to notify the Office about his injuries and to obtain permission to undergo an examination without being held personally responsible for payment of the examination. He further indicated that all his injuries were witnessed by either his four team members or the entire team of special agents. Appellant provided a detailed description of the injuries he sustained to his left buttocks cheek, ear, lower back/right hip area, left knee and right wrist which he sustained on October 28, November 15 and 20 and December 26, 2003 December 2, 2004, respectively while stationed in Iraq. Regarding the alleged October 28, 2003 injury, appellant stated that, between 1000 and 1830 hours, he was riding in an employing establishment vehicle from Kuwait to Al Hillah, Iraq. He further stated that he bounced up and down when the vehicle went through large holes and eventually he lost all sensation in his left buttocks cheek. Appellant regained feeling in this area five or six months later. He named the special agents in the vehicle with him at the time of the alleged injury and stated that upon completing the mission he informed them of his injury and notified Mr. Butler. Appellant indicated that his coworkers could verify that the vehicle hit holes in the road and that he provided notification of his alleged injury. He concluded that he did not want any compensation but that he only wanted permission to seek medical treatment if symptoms relating to his injuries recurred.

Appellant submitted a treatment note dated October 5, 2004 from Lieutenant Blaser, an employing establishment physician's assistant in which he indicated that appellant filed claims for injuries he sustained while in Iraq from October to December 2003. Lieutenant Blaser stated

that appellant was not seeking monetary compensation for his injuries rather he wished to document his injuries in case he experienced future problems. Lieutenant Blaser provided a history of appellant's injuries and reported his findings with regard to appellant's right wrist, back, left knee, hearing and left buttocks cheek conditions.

By decision dated October 28, 2004, the Office found the evidence of record sufficient to establish that the claimed incident occurred as alleged but insufficient to establish that appellant sustained a medical condition causally related to the accepted employment incident. Accordingly, the Office denied his claim.

On November 29, 2004 appellant requested reconsideration. He submitted a duplicate copy of his October 6, 2004 letter and the Office's October 28, 2004 decision.

In a January 6, 2005 decision, the Office denied appellant's request for reconsideration on the grounds that it neither raised a substantive legal question nor included new and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

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 or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS -- ISSUE 1

There is no dispute in this case that on October 28, 2004 appellant was bounced up and down on a hard bench while riding in an employing establishment vehicle when he alleged he hurt his left buttocks. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted incident caused an injury. The October 5, 2004 treatment note of Lieutenant Blaser, a physician's assistant, revealed a history of appellant's injuries and his findings with regard to appellant's right wrist, back, left knee, hearing and left buttocks cheek conditions. The Board finds that Lieutenant Blaser's treatment note does not constitute competent medical evidence as a physician's assistant is not defined as a physician under the Act.⁹ Thus, his treatment note is insufficient to establish appellant's claim. The Board notes that appellant did not submit any other medical evidence in support of his claim. As there is no rationalized medical evidence of record establishing that appellant hurt his left buttocks cheek while in the performance of duty as alleged, he has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹⁰ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹¹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Charles E. Evans*, 48 ECAB 692 (1997).

⁹ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(1)-(2).

¹² *Id.* at § 10.607(a).

ANALYSIS -- ISSUE 2

In an October 28, 2004 decision, the Office found that appellant did not sustain an injury while in the performance of duty on October 28, 2003. Appellant disagreed with this decision and requested reconsideration on November 29, 2004. Thus, the relevant underlying issue in this case is whether appellant sustained a medical condition due to the accepted October 28, 2003 employment incident.

Appellant submitted a duplicate copy of his October 6, 2004 letter which was submitted in response to the Office's September 13, 2004 developmental letter and the Office's October 28, 2004 decision. The Board finds that this evidence does not constitute a basis for reopening the case for further merit review, as it does not address the relevant medical issue of causal relation.¹³

The Board finds that appellant 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, he did not submit any relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that he was not entitled to a merit review.¹⁴

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹³ Kevin M. Fatzer, 51 ECAB 407 (2000).

¹⁴ See James E. Norris, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2005 and October 28, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 15, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board