United States Department of Labor
Employees' Compensation Appeals Board

ANGELIKA U. ADAMS, Appellant	)	
and	)	**Docket No. 05-376**
	)	**Issued: July 14, 2005**
DEPARTMENT OF THE ARMY,	)	
Fort Campbell, KY, Employer	)	

Appearances:
Angelika U. Adams, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
A. PETER KANJORSKI, Alternate Judge

JURISDICTION

On December 1, 2004 appellant filed a timely appeal of a December 4, 2003 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty. She also appeals the Office's March 22, 2004 nonmerit decision which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury while in the performance of duty; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 29, 2003 appellant, then a 55-year-old audio visual specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2003 she was providing photographic support for the "NCOA" and used an all-terrain vehicle (ATV) to get to different

locations. She stated that she drove through rough terrain which caused her entire body to shake. Appellant contended that on September 23, 2003 she dislocated her left hip.

By letter dated October 16, 2003, the Office requested that appellant submit additional factual information including, among other things, a description of how the alleged injury occurred and a detailed narrative medical report which contained, among other things, an explanation as to how the reported work incident caused or aggravated the claimed injury.

The Office received a September 25, 2003 workers' compensation status form from Dr. Keith D. Starkweather, appellant's treating Board-certified orthopedic surgeon, who indicated that she was status post left total hip arthroplasty and that she could return to full-duty work on September 29, 2003. The Office also received postoperative instructions dated September 24, 2003 from a nurse whose signature is illegible, advising appellant about taking pain medication, attending a follow-up medical examination and placing her knee in the proper position.

The front page of an authorization for examination and/or treatment (Form CA-16), completed on September 30, 2003 by Janet Arnold, a physician's assistant, indicated that appellant was using a small ATV ("Gator") on September 19, 2003 in the line of duty. Mrs. Arnold further indicated that appellant related the terrain was very rough and there was much bouncing. She noted that on September 24, 2003 she suffered a dislocated left hip. The second page of the Form CA-16, completed on October 9, 2003 by Dr. Starkweather, revealed that appellant was riding in an ATV while working at the employing establishment and injured her left hip which became dislocated on September 25, 2003. Dr. Starkweather noted that she suffered from degenerative joint disease/strain in her left hip. He indicated with an affirmative mark that the diagnosed conditions were caused by the employment activity.

Dr. Starkweather's October 9, 2003 duty status report revealed a history that appellant hurt her left hip while riding on an ATV in a field environment. He noted her physical limitations and found that she suffered from pain and a dislocated hip. Dr. Starkweather stated that the diagnosis was due to appellant's injury and that she could resume full-time work on October 9, 2003.

Another report dated October 9, 2003 was unsigned and contained Dr. Starkweather's typed name. This report provided a history that appellant dislocated her left hip while experiencing a very bumpy ride on an ATV while working at the employing establishment. X-rays demonstrated some degenerative disc changes in her back and she was released to full-duty work and careful activity. An October 22, 2003 report from a physician whose signature is illegible indicated that appellant could return to full-duty work on that date. An October 27, 2003 report from another physician whose signature is illegible revealed that appellant was status post surgery and that she could perform sedentary limited-duty work only beginning November 3, 2003.

In response to the Office's October 16, 2003 letter, appellant submitted a narrative statement dated November 14, 2003, in which she listed the chain of events leading to her alleged employment-related injury. She stated that on September 10, 2003 she provided photographic coverage of soldiers going through a navigation course in one of the employing

establishment's training areas while riding in a two-seated "Gator" over terrain that was rough and rugged and had ridges and holes. Appellant noted that on September 12, 2003 she photographed soldiers performing field exercises in one of the employing establishment's wooded training areas while riding in a "Gator." She indicated that they drove through fields of high weeds, hit holes and ridges, got hit by tree branches and were bouncing on the seats back and forth and in the air. Appellant related that she was feeling as usual until about 1600 hours when she started to feel pain in her left hip and she took an additional pill for pain. She noted the pain and discomfort she experienced and stated that she called in sick for work on September 21, 2003. Appellant further stated that she returned to work on September 23, 2003 although she was still in pain. She indicated that she worked her tour of duty on September 24, 2003 and while she was outside her house around 1700 hours, appellant bent over and her left hip made a popping sound and she fell to the ground in pain. Appellant was transported to the hospital by ambulance and underwent an x-ray examination which revealed a dislocated left hip. She received follow-up treatment from Dr. Starkweather, who ordered her to rest and stated that she could return to work on September 29, 2003. Appellant returned to work on September 29, 2003 and on September 30, 2003 she completed her portion of the Form CA-1 and gave it to Mrs. Arnold, who filled out her portion of the claim form and submitted it to Marshall Woods, appellant's supervisor. Appellant stated that, since Mr. Woods did not have supervisory authority, he gave the Form CA-1 to Mr. Heath, an employing establishment employee who kept it for several days before giving it back to Mr. Woods. She further stated that Mr. Woods completed the supervisor's portion of the Form CA-1 and took it to the appropriate office. Appellant concluded by noting that she was treated by Dr. Starkweather on October 9, 2003.

Appellant submitted CA-1 forms for a fractured right heel and scratched right knee she sustained on March 10, 1998 and a twisted right knee she sustained on July 24, 2003.[1] She also submitted a Form CA-1 that was filed on October 6, 2003 alleging that she dislocated her left hip on September 19, 2003 in the same manner as alleged in her September 29, 2003 Form CA-1. In an October 31, 2003 report, Dr. Starkweather provided a history that she was on assignment as a photographer on September 10 and 12, 2003, while riding in an ATV which proved to be a very, very bumpy ride and resulted in her being bounced around in the vehicle. He noted that appellant underwent left total hip arthroplasty in December 2001 and that her hip functioned well for three years prior to her injury in the ATV. Dr. Starkweather further noted that her left hip popped out while at home following her ride in the ATV and the treatment she received on September 25, 2003. He indicated that an x-ray revealed a dislocated left hip and stated that appellant suffered from a left hip strain due to the dislocation. Dr. Starkweather opined that riding around in a bumpy ATV was too aggressive of an activity for a patient who had a previous total hip replacement and this activity loosened up appellant's hip enough to dislocate it.

In a November 6, 2003 letter, the employing establishment controverted appellant's claim on the grounds that she did not sustain an injury in the manner alleged. The employing establishment stated that her allegation that she sustained an injury on September 19, 2003 in its training area due to riding over rough terrain while in the performance of duty did not match the dates in its records or the statement given by appellant's witness. The employing establishment stated that its records indicated that appellant was on assignment on September 19, 2003 at the

[1] The record does not indicate whether the Office accepted appellant's claims for a right knee injury.

installation theater photographing a graduation ceremony and not in the training area and she would not have ridden over rough terrain during this assignment. The employing establishment's records also showed that she had assignments on September 10 and 12, 2003 at the location where the alleged injury occurred and that First Sergeant Richard P. Dennis, appellant's witness, stated that he transported her in a "Gator" on those dates to the training areas. The employing establishment noted that appellant reported for duty on September 23 and 24, 2003 and she did not exhibit difficulty walking or show that she was in pain. The employing establishment related that appellant called Mr. Woods, her immediate supervisor, on the evening of September 24, 2003 to tell him that she had dislocated her hip while spreading mulch at home. Based on the contradictory information provided by her, as well as the statements from First Sergeant Dennis and Mr. Woods, the employing establishment stated that appellant's injury appeared to have occurred at home while off duty and it should not be considered work related.

The employing establishment submitted Mr. Woods' undated narrative statement in which he provided that appellant telephoned him during the evening of September 24, 2003 and stated that she dislocated her left hip while putting mulch in her flower garden. He related that she told him she was at the hospital or was on the way to the hospital and would keep him informed. Mr. Woods indicated that on September 25, 2003 appellant called him and stated that she was admitted to a hospital emergency room on September 24, 2003 to get her left hip relocated and that after visiting her physician on September 25, 2003 she was placed on bed rest until September 29, 2003, after which she would be able to return to full-duty work.

By decision dated December 4, 2003, the Office found the evidence of record insufficient to establish that appellant sustained the employment incident as alleged, based on her inconsistent statements and Mr. Woods' statement. Accordingly, the Office denied her claim.

In a March 2, 2004 letter, appellant requested reconsideration. She stated that "[c]ontinued health issues based on my original claim are being addressed at this time with my orthopedic Dr. Starkweather, M.D." Appellant explained that this was the reason why she was unable to respond earlier. She stated that "I am collecting additional information as to the legal arguments of management, witness and your denial [sic] of my claim, on which you base your decision to deny it."

In a March 22, 2004 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.[2]

[2] On appeal, appellant has submitted new evidence. The Board, however, may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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.[4] 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.[5]

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.[6] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

An injury does not have to be confirmed by eyewitnesses in order to establish 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 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 sufficient doubt on an employee's statements in determining whether she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and

---

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

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

[7] *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

[8] *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).

medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS -- ISSUE 1

Regarding the first component, appellant contends that she dislocated her left hip on September 19, 2003 as a result of taking photographs for the employing establishment while riding in an ATV over rough terrain. The Board notes that she submitted medical reports signed by Mrs. Arnold and Dr. Starkweather and an unsigned report which contained Dr. Starkweather's typed name that provided a history that on September 19, 2003 she was using an ATV over rough terrain while in the performance of duty and appellant dislocated her left hip on September 24, 2003 as a result of riding in the ATV.

The Board notes, however, that the employing establishment controverts appellant's claim by stating that the description of the alleged injury neither matches the dates in its records, nor is it consistent with Mr. Woods' statement. The Board finds that appellant has not met her burden of proof as her statements were not consistent with the surrounding facts and circumstances. In this regard, the employing establishment noted that on September 10 and 12, 2003 appellant was in fact on assignment in the training areas where the alleged injury occurred and that First Sergeant Dennis transported her in a "Gator" to the training area areas, but stated that on September 19, 2003 the date of the alleged injury, she was taking photographs at a graduation ceremony and not in a training area. The employing establishment noted that following the alleged injury, she reported to work on September 24, 2003 without showing any signs of difficulty with walking and or being in pain. Moreover, during the evening of September 24, 2003 she advised Mr. Woods, her immediate supervisor, that she dislocated her left hip while working in her garden at home. Further, he confirmed that, during the evening of September 24, 2003, appellant advised him that she dislocated her left hip while gardening at home.

Based on the above discrepancies in the history of injury, which is inclusive of the various dates of injury provided and the various description of the manner in which the alleged injury occurred, the Board finds that appellant did not establish that the claimed September 19, 2003 incident occurred as alleged. Thus, the Board finds that as she has failed to establish that the injury occurred at the time, place and in the manner alleged, she has failed to establish fact of injury.

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

[10] *Charles E. Evans*, 48 ECAB 692 (1997).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[11] 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.[12] 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.[13] 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.

ANALYSIS -- ISSUE 2

In a December 4, 2003 decision, the Office found that appellant did not sustain an injury while in the performance of duty. She disagreed with this decision and requested reconsideration by letter dated March 2, 2004. In this letter, appellant stated that Dr. Starkweather was addressing her "continued health issues" and that "I am collecting additional information as to the legal arguments of management, witnesses and your denial [sic] of my claim." The Board notes that the Office did not receive any additional evidence from either Dr. Starkweather or appellant prior to the issuance of its March 22, 2004 decision denying her request for reconsideration.

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, she 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 she was not entitled to a merit review.[14]

CONCLUSION

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

[11] 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).

[12] 20 C.F.R. § 10.606(b)(1)-(2).

[13] *Id*. at § 10.607(a).

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

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2004 and December 4, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

A. Peter Kanjorski, Alternate Judge
Employees' Compensation Appeals Board