United States Department of Labor
Employees' Compensation Appeals Board

MATHEW R. HALL, Appellant	)	
and	)	**Docket No. 05-1428**
	)	**Issued: April 5, 2006**
DEPARTMENT OF THE ARMY, DEPARTMENT OF MILITARY SCIENCE, UNIVERSITY OF KENTUCKY, Lexington, KY, Employer	)	

Appearances:
Matthew R. Hall, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 4, 2005 which denied his request for further merit review and January 28 and February 23, 2005 merit decisions that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit and nonmerit issues.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on October 9, 2004; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 13, 2004 appellant, then an 18-year-old Reserve Officers' Training Corps (ROTC) cadet, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2004 he

was participating in land night exercises at approximately 8:00 p.m. when he slipped and fell head first down a small embankment. He indicated that, while he was sliding his right eye came into contact with what he believed to be a branch protruding from the ground.[1] Appellant indicated that his eye became irritated at that time and he flushed it out and continued to complete his exercise. The next morning, his eye swelled shut and Lieutenant Colonel David R. Alexander took him to a local hospital after observing his eye. Appellant alleged that his eye hemorrhaged because a piece of bark had lodged itself under his eye lid.

In a December 13, 2004 statement, Lieutenant Colonel Alexander confirmed that appellant sustained injury while performing ROTC field exercises on October 9, 2004. He advised that his claim was not submitted within 30 days due to a change of employing establishment personnel who were unaware of the proper procedures. The employing establishment provided an incident report dated October 12, 2004. The incident was described as a nonserious injury during training and that appellant was evacuated to the emergency room as a precaution. At approximately 9:30 a.m. on October 10, 2004 Lieutenant Colonel Alexander noticed that appellant's eye looked red and irritated and he inquired about the incident. The employing establishment also indicated that, although a combat lifesaver looked at appellant he was taken to the emergency room to have his eye flushed and examined by a physician. The report indicated that appellant's eye was cleaned out, x-rays were obtained and he was given some eye drops and a patch with no further follow-up required. Appellant was returned to duty. It was recommended that he follow up with the student clinic as a precaution.

In a December 22, 2004 letter, the Office requested that appellant obtain an official "line of duty" statement from his ROTC commander. The Office also informed him of his responsibility to provide a reasoned medical opinion stating how the reported work incident caused or aggravated his claimed injury.

In a decision dated January 28, 2005, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was sufficient to show that the claimed incident occurred as alleged. However, there was no medical evidence supporting that the accepted employment incident caused a diagnosed condition.

Appellant requested reconsideration on February 7, 2005 and submitted a line of duty determination from Lieutenant Colonel Alexander. He also submitted a Form CA-20 and October 10, 2004 treatment note from Dr. Martin Mangan, an emergency medicine physician, who indicated that appellant sustained blunt trauma and edema which was mild, to the right eye.[2] In the line of duty statement dated October 12, 2004, Lieutenant Colonel Alexander confirmed that he sustained an injury to his eye on October 9, 2004 in the line of duty while undergoing Army training in Artemus, Kentucky.

In a February 1, 2005 attending physician's report, Dr. Mangan noted that appellant was seen on October 10, 2004 and checked the box "yes" in response to whether he believed the

[1] Appellant stated that it was dark during the exercise.

[2] The hospital records listed normal findings pertaining to the pupils, direct and consensual responses, cornea and iris. The listed impression was orbital injury.

condition found was caused or aggravated by an employment injury. He noted that appellant was given a patch, advised to follow up with an ophthalmologist and was discharged at that time.

In a merit decision dated February 23, 2005, the Office found that appellant had not provided sufficient medical evidence to establish causal relationship.[3]

By letter dated March 3, 3005, appellant requested reconsideration. The Office subsequently received reports which were signed by a nurse, who indicated that appellant's eye was irritated. In a March 3, 2005 statement, Lieutenant Colonel Alexander repeated that appellant sustained an eye injury during his training exercises.

By decision dated April 4, 2005, the Office denied appellant's request for reconsideration on the grounds that his request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

[3] The Office's decision states that fact of injury was accepted. However, the context of the decision makes it clear that the Office found that the medical evidence was insufficient to establish that the employment incident identified by appellant caused an injury.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Id*.

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury to his right eye when it came into contact with a branch during a night training exercise on October 9, 2004. The employing establishment noted that he was in the line of duty at the time of the incident.[10] The Board finds that appellant's right eye came into contact with a branch during a night training exercise, as alleged. The Office accepted the incident in this case.

However, the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that the October 9, 2004 incident caused a personal injury. The medical evidence contains no firm diagnosis, no rationale and no explanation of the mechanism of injury regarding the employment incident on October 9, 2004.[11]

Appellant submitted a February 1, 2005 form report in which noted treatment on October 10, 2004 for an orbital injury and discharged with a patch and instructions to follow up with an ophthalmologist. He checked a box "yes" in response to whether he believed the condition found was caused or aggravated by an employment injury. The Board has held that the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[12] The medical evidence submitted by appellant does not address how the October 9, 2004 incident caused an injury to his right eye and is of limited probative value. The findings provided on examination of October 10, 2004 listed normal findings pertaining to the eye with an impression of orbital injury, a diagnosis which is not fully explained by Dr. Mangan.[13] The evidence is insufficient to establish that the October 9, 2004 employment incident caused or aggravated a specific injury.

The Board notes that appellant did not submit sufficient rationalized medical evidence to support that he sustained an injury on October 9, 2004. Absent medical evidence explaining how the October 9, 2004 work-related incident caused a specific injury, appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 1

Under section 8128(a) of the Act,[14] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal

[10] Regarding line of duty determinations unique to ROTC claims, *see Dustin E. Marlett*, 54 ECAB 602 (2003). Office procedures contemplate that, if line of duty is established, fact of injury and causal relationship will be determined as in other claims under the Act. *See* Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers' Training Corps*, Chapter 4.600.6(a) (May 1996).

[11] *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).

[12] *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

[13] *See Linda I Sprague*, 48 ECAB 386, 389-90 (1997).

[14] 5 U.S.C. § 8128(a).

regulations which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(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 [the Office]."[15]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[16]

ANALYSIS -- ISSUE 2

In support of his March 3, 2005 request for reconsideration, appellant submitted several reports which were signed by a nurse, indicating that his eye was irritated. Health care providers such as nurses, are not physicians under the Act. Thus, their opinions have no weight or probative value.[17] Thus, these reports are not relevant to the underlying medical issue in this case. Appellant also submitted a March 3, 2005 statement from Lieutenant Colonel Alexander, repeating that appellant sustained an eye injury during his training exercises. However, this is not relevant, as the issue is medical in nature, which can only be established by probative medical evidence from a physician. This evidence is insufficient to require that the Office reopen the case for further merit review of appellant's claim.

Appellant is not entitled to a merit review because the information provided was not new, relevant or pertinent. He did not advance a relevant legal argument that had not been previously considered by the Office. Additionally, appellant did not argue that the Office erroneously applied or interpreted a specific point of law. Consequently, he is not entitled to a merit review of the merits of the claim based upon any of the above-noted requirements under section 10.606(b)(2). Accordingly, the Board finds that the Office properly denied appellant's March 3, 2005 request for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

---

[15] 20 C.F.R. § 10.606(b).

[16] 20 C.F.R. § 10.608(b).

[17] *See Jan A. White,* 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the April 4, February 23 and January 28, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.[18]

Issued: April 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[18] The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to review of the evidence which was in the case at the time of its final decision; *see* 20 C.F. R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.