United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 06-1198**
	)	**Issued: October 30, 2006**
U.S. ARMY CORPS OF ENGINEERS, AL ASAD AIR BASE, Iraq, Employer	)	

Appearances:
Appellant, 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 May 5, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 13, 2005 denying his claim. He also appealed a March 15, 2006 decision denying his oral hearing request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that his broken teeth resulted from an employment incident of August 14, 2005; and (2) whether the Office properly denied his request for an oral hearing as untimely.

FACTUAL HISTORY

On August 20, 2005 appellant, then a 53-year-old inspector, filed a traumatic injury claim (Form CA-1) alleging that he cracked an upper tooth and lost half a crown on another tooth on August 14, 2005 when he bit down on a penlight after becoming alarmed by rocket and tank fire. At the time of the injury, he was serving in Iraq. No lost time occurred.

In a September 12, 2005 letter, the Office advised appellant that the evidence received was insufficient to establish that he actually experienced the incident or employment factor alleged to have caused the injury. It advised him of the additional evidence needed to establish his claim, including a rationalized report from his attending physician diagnosing a condition and supporting a causal relationship between the diagnosed conditions and the August 14, 2005 incident.

Appellant submitted a dental report dated August 14, 2005 from B.K. Tant[1] which indicated that he was seen for teeth complaints but did not have any pain. The report also noted that they did not have the capability to handle his dental complaints.

In a September 9, 2005 report, Dr. Kraig Kenny, a dentist, indicated that appellant was seen for broken teeth and that examination showed tooth number 5 and tooth number 12 were fractured. He recommended a crown for tooth number 5 and a post/core crown with possible crown lengthening for tooth number 12.

By decision dated October 13, 2005, the Office denied the claim for failure to establish fact of injury. It advised that the evidence of file supported that the claimed event occurred but no medical evidence was provided which established a diagnosis connected to the accepted event.

The Office received additional evidence from appellant. This included a September 20, 2005 statement; copies of electronic mail correspondence, a copy of an x-ray of appellant's mouth dated March 11, 2005; and an August 14, 2005 accident investigation report, which advised that on August 14, 2005 appellant was inspecting equipment in a conex box at Haditha Dam power switchyard with a mini-mag flash light in his mouth when a nearby explosion from a rocket or tank caused him to bite down on the flashlight and resulted in one broken crown and one broken tooth. In an undated Form CA-20, Dr. Kent S. Gere, a dentist, opined, with a checkmark in the appropriate box, that appellant's fractured teeth were caused or aggravated by employment activity.

In a November 30, 2005 letter, the Office noted receiving certain evidence, including Dr. Gere's report and advised appellant that he could pursue his appeal options as outlined in the October 13, 2005 decision.

In a letter dated January 31, 2006 and postmarked February 1, 2006, appellant requested an oral hearing before the Branch of Hearings and Review. No additional evidence was received.

By decision dated March 15, 2006, the Office denied appellant's request for an oral hearing. It found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issue involved and that the request was further denied for the reason that the issue in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

[1] The record is devoid of any indication of B.K. Tant's credentials.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 the 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[5] 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.[6]

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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.[7]

ANALYSIS -- ISSUE 1

Appellant claimed that on August 14, 2005 he broke two teeth when a nearby explosion from a rocket or tank caused him to bite down on a flashlight. The Office accepted that this incident occurred as alleged. Appellant has established the alleged incident as factual. The medical evidence of record, however, does not provide a rationalized medical opinion to support that the August 14, 2005 incident caused an injury to his teeth.

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[2] 5 U.S.C. §§ 8101-8193.

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

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

In an August 14, 2005 report, B.K. Tant indicated that appellant did not have any pain and that the employing establishment did not have the capabilities to handle appellant's dental complaints. The record is devoid of any indication of B.K. Tant's credentials as a physician. It is not established that the report constitutes probative medical evidence.[8]

Dr. Kenny indicated in a September 9, 2005 report that appellant had fractured tooth number 5 and tooth number 12. This report is insufficient to establish appellant's claim as Dr. Kenny failed to explain how his dental condition was causally related to the accepted employment incident. Dr. Kenny did not provide any history of the August 14, 2005 incident or explain how this caused or contributed to appellant's broken teeth.

While appellant contends that his work contributed to his teeth condition, the record contains insufficient medical opinion explaining how his claimed work factors caused or aggravated his claimed conditions. 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.[9] Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit.

There is insufficient probative, rationalized medical evidence explaining why appellant's claimed teeth conditions were caused or aggravated by his employment activities. He has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.[11] Section 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[12] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may, within its discretionary powers, grant or deny appellant's request and must exercise its discretion.[13] The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

[8] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[9] *Nicollette R. Kelstrom*, 54 ECAB 570 (2003).

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. §§ 10.616, 10.617.

[13] *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

> If the claimant is not entitled to a hearing or review, (*i.e.*, the request was untimely, the claim was previously reconsidered), Hearing and Review will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.[14]

ANALYSIS -- ISSUE 2

Appellant requested a hearing in a letter dated January 31, 2006 and postmarked February 1, 2006. Section 10.616 of the federal regulations provide: The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.[15] As the postmark date of the request was more than 30 days after issuance of the October 13, 2005 Office decision, appellant's request for a review of the written record was untimely filed.

The Office notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. The Office has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[16] There is no indication that the Office abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.[17]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his teeth conditions are causally related to factors of his federal employment. The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

[15] 20 C.F.R. § 10.616.

[16] *Samuel R. Johnson*, 51 ECAB 612 (2000).

[17] The Board notes that, following the Office's October 13, 2005 merit decision and on appeal, appellant submitted additional evidence. As this evidence was not considered by the Office in reaching a merit decision, the Board may not consider it on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2006 and October 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 30, 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