

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.B., Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION,  
Indianapolis, IN, Employer**

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**Docket No. 07-1229  
Issued: October 10, 2007**

*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 April 4, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 13, 2006, denying her claim and a March 16, 2007 nonmerit decision, which denied her request for review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits and nonmerits of this claim.

**ISSUES**

The issues are: (1) whether appellant sustained an injury in the performance of duty on April 25, 2006; and (2) whether the Office abused its discretion in denying appellant's request for review of the written record.

**FACTUAL HISTORY**

On May 1, 2006 appellant, then a 38-year-old special agent, filed a traumatic injury claim alleging that on April 25, 2006 she injured her hip and leg as a result of a motor vehicle accident that occurred in the performance of her federal duties. She submitted an accident report

completed by the Indiana State Police. In an April 26, 2006 note, Dr. George A. DeSilvester, a family practitioner, released appellant to return to work as of May 1, 2006 with a restriction of no rigorous work activity until May 15, 2006.

By letter dated May 11, 2006, the Office requested that appellant submit additional medical evidence in support of her claim. In response, she submitted a note from the Carmel Ambulatory Surgery Center indicating that it needed an authorization number to release her file.

By decision dated June 13, 2006, the Office denied appellant's claim finding that she did not establish that her injury arose in the performance of duty.

On February 12, 2007 appellant requested review of the written record. By decision dated March 16, 2007, the Office denied appellant's request for review of the written record because it was untimely filed.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that an 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, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>3</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to a specific condition of employment.<sup>5</sup> Neither the fact that a

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<sup>1</sup> 5 U.S.C. § 8122(a).

<sup>2</sup> *Id.*

<sup>3</sup> *John J. Carlone*, 41 ECAB 345 (1989).

<sup>4</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>5</sup> *Katherine J. Friday*, 47 ECAB 591 (1996).

condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.

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

The record establishes that appellant was in an automobile accident that occurred April 25, 2006 during her federal employment. However, she did not submit medical evidence that established a causal relationship between a diagnosed condition and the accepted incident. The only medical evidence of record is a June 13, 2006 return to work note by Dr. DeSilvester. This note does not contain a diagnosis or any statement that appellant missed work due to a condition that was caused by the accepted employment incident, *i.e.*, the motor vehicle accident of April 25, 2006. Accordingly, the Office properly denied her claim.

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

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.<sup>6</sup> A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.<sup>7</sup> A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for the hearing is sought.<sup>8</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>9</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>10</sup>

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

Appellant's request for a review of the written record was received by the Office on February 12, 2007, more than 30 days after the Office's June 13, 2006 decision. Therefore, she was not entitled to a hearing as a matter of right. The Office also exercised its discretion and determined that this case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered which establishes that appellant sustained an injury as alleged. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's request for a review of the written record.

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<sup>6</sup> 5 U.S.C. § 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. *See Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>7</sup> 20 C.F.R. § 10.616(a).

<sup>8</sup> *James Smith*, 53 ECAB 188 (2001).

<sup>9</sup> 20 C.F.R. § 10.616(b).

<sup>10</sup> *James Smith*, *supra* note 8.

### **CONCLUSION**

The Board finds that the Office properly found that appellant had not established that she sustained an injury in the performance of duty on April 25, 2006. The Board further finds that the Office did not abuse its discretion in denying appellant's request for review of the written record.<sup>11</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 16, 2007 and June 13, 2006 are affirmed.

Issued: October 10, 2007  
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

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<sup>11</sup> On the same date as appellant filed an appeal to the Board, on April 4, 2007, she also requested reconsideration before the Office. On May 2, 2007 the Office issued a decision accepting appellant's claim for right wrist sprain, right shoulder sprain, sciatica and right hip contusion. The Board finds that this decision is null and void, as both the Board and Office cannot have jurisdiction over the same issue in the same case at the same time. 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993).