U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY JEAN BASSETT-AMRHEIN and DEPARTMENT OF LABOR, OFFICE OF INSPECTOR GENERAL, Chicago, Ill.

Docket No. 97-785; Submitted on the Record;
Issued November 6, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

On May 30, 1996 appellant, a 25-year-old special agent, allegedly suffered abrasions on her elbows and bruises on her legs when she was struck by a car while jogging across the street, an activity she was performing pursuant to her employment-related physical training. On June 4, 1996 appellant filed a Form CA-1 claim based on traumatic injury, seeking continuation of pay based on the alleged injuries she sustained to her elbows and legs due to the employment incident of May 30, 1996.

In a letter to appellant dated June 25, 1996, the Office requested that appellant submit additional information in support of her claim, including a medical report, opinion, and diagnosis from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office informed the employee that she had 30 days to submit the requested information.

In response, appellant submitted three letters, two from herself and one from the employing establishment, supporting her claim that the activity in which she was engaged on May 30, 1996, the date of the employment incident, was performed in accordance with the employing establishment's physical training program. Appellant also submitted hospital emergency room notes dated May 30, 1996 which indicated that she had been treated there for "wounds "and "severe bruises."

By decision dated July 26, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty. In the memorandum accompanying the decision, the Office found that

although appellant submitted sufficient evidence to establish the claimed incident at the time, place and in the manner alleged, she failed to submit medical evidence to establish that the employment incident caused a personal injury or resultant disability.

In a letter dated September 10, 1996, appellant requested reconsideration of the Office's previous decision.

By decision dated November 22, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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, 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.[2] 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.[3]

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.[4] 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.[5] The medical evidence required to establish causal relationship is usually rationalized medical 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.[6]

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *Joe Cameron,* 42 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

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

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

[5] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[6] *Id.*

In the present case, it is uncontested that appellant experienced the May 30, 1996 employment incident at the time, place and in the manner alleged. However, the question of whether this incident caused a personal injury generally can be established only by medical evidence,[7] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on May 30, 1996 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship are the May 30, 1996 hospital emergency room notes, which merely indicated that appellant was treated there for "severe bruises" and "wounds" on the date of the employment incident. These notes do not provide a probative, rationalized medical opinion sufficient to demonstrate that appellant's May 30, 1996 employment incident caused a personal injury or resultant disability. Causal relationship must be established by rationalized medical opinion evidence, and appellant failed to submit such evidence in the present case. Appellant did not provide a medical opinion which provides a firm diagnosis, or describes or explains the medical process through which the May 30, 1996 work accident caused the claimed injuries. Thus, the Office's decision is affirmed.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[8] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[9] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law, and has not advanced a point of law or fact not previously considered by the Office. In addition, appellant failed to submit any new and relevant medical evidence appellant in support of her request for reconsideration. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

[7] *See John J. Carlone, supra* note 4.

[8] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.138(b)(2).

[10] *Howard A. Williams*, 45 ECAB 853 (1994).

The November 22 and July 26, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
November 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member