

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAQUETTA L. COLLINS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Chula Vista, CA

*Docket No. 99-155; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has 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 in refusing to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a).

On December 6, 1995 appellant, then a 44-year-old contact representative, filed a traumatic injury claim (Form CA-1) assigned number A13-1097815 alleging that on December 4, 1995 she sustained an employment-related injury.

By letter dated January 29, 1996, the Office advised appellant to submit factual and medical evidence supportive of her claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence.

In response to the Office's letter, appellant submitted factual evidence, including her February 27, 1996 narrative statement indicating that during the morning of December 4, 1995 she felt uncomfortable because the room was warm and stuffy. Appellant stated that, when she bent down to pick up a pencil from the floor, she did not remember what subsequently happened. Appellant also stated that she remembered lying on the floor feeling dizzy and experiencing a headache. Appellant further stated that she was claiming that she sustained a "heat stress injury" as a result of the December 4, 1995 incident.

By decision dated March 12, 1996, the Office found the evidence of record sufficient to establish that the incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant sustained a medical condition causally related to the December 4, 1995 employment incident. In a March 16, 1996 letter, appellant requested an oral hearing before an Office representative.

By decision dated October 14, 1997, the hearing representative affirmed the Office's decision. On June 22, 1998 appellant, through her representative, requested reconsideration of the Office's decision accompanied by factual evidence.

In an August 4, 1998 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of an immaterial and irrelevant nature, and thus, insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to 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 Act¹ 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 limitations 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

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, which is alleged to have occurred.⁴ In this case, the Office accepted that appellant sustained an incident at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵

Regarding the second component, the only medical evidence of record, which addressed whether appellant sustained an injury due to the December 4, 1995 employment incident is the June 6, 1997 medical report of Dr. Laurence K. Favrot, a Board-certified internist. In this report,

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

Dr. Favrot provided that appellant had a history of hypertension and ascending aortic aneurysm. He stated that the latter problem was repaired on April 25, 1995 and that, on December 4, 1995, appellant had a syncopal episode. Dr. Favrot noted the medications that appellant was taking at the time of the December 4, 1995 employment incident. He also noted appellant's statement that it was very hot in her office when the syncope occurred. Dr. Favrot opined that "[i]t is possible the combination of excessive heat and antihypertensives could culminate in syncope." The Board has held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁶ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁷ The Board finds that Dr. Favrot's opinion is speculative as to the causal relationship between appellant's condition and the December 4, 1995 employment incident. In addition, it fails to provide any rationale explaining how or why appellant's condition was caused by the December 4, 1995 employment incident. Thus, his report is insufficient to establish appellant's burden.⁸

Inasmuch as there is no rationalized medical evidence of record establishing that appellant sustained an injury due to the December 4, 1995 employment incident, the Board finds that appellant has failed to satisfy her burden of proof in this case.

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

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁹ 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 requirements, the Office will deny the application for review without review of the merits of the claim.¹⁰

⁶ See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁷ *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

⁸ The Board notes that appellant submitted evidence indicating that she sustained an emotional condition due to stress at the employing establishment. However, appellant has only alleged in her Form CA-1 that she sustained a "heat stress injury" as a result of the December 4, 1995 employment incident. The evidence submitted by appellant failed to address whether she sustained a "heat stress injury" due to the December 4, 1995 employment incident. As the Office has not issued a final decision regarding appellant's allegations of an employment-related emotional condition, the Board has no jurisdiction to consider them. See 20 C.F.R. § 501.2(c).

⁹ 20 C.F.R. § 10.138(b)(1).

¹⁰ 20 C.F.R. § 10.138(b)(2).

In her request for reconsideration, appellant argued that the hearing representative did not follow proper procedure in considering the employing establishment's response to the hearing transcript outside the 15-day limit, the employing establishment failed to issue an authorization for examination and/or treatment (Form CA-16) and that the employing establishment's controversion was erroneous. The central issue in this case is whether appellant submitted medical evidence sufficient to establish that she sustained an injury due to the December 4, 1995 employment incident.¹¹ Appellant's arguments are irrelevant to the issue at hand. Therefore, appellant has not provided any evidence that would warrant reopening the record and the Office properly denied her request for reconsideration.

Because appellant did not show that the Office erroneously applied or interpreted a point of law, advance a point of law or a fact not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, she has failed to establish that the Office abused its discretion in its August 4, 1998 decision denying her request for review of the merits of the claim.

The August 4, 1998 and October 14, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

¹¹ The Board notes that appellant did not submit any medical evidence in support of her request for reconsideration.