

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONNYE L. BANNISTER and DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT, OFFICE OF INSPECTOR GENERAL, BUREAU OF PUBLIC DEBT,  
Washington, DC

*Docket No. 02-2024; Submitted on the Record;  
Issued June 2, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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 properly refused to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On December 6, 2001 appellant, then a 25-year-old special agent, filed a traumatic injury claim alleging that on November 1, 2001 she injured her chest, knees, right foot, back and neck when her motor vehicle was struck by another vehicle. She provided a copy of the police accident report indicating that the accident occurred at 3:00 p.m.<sup>1</sup>

By decision dated March 28, 2002, the Office denied appellant's claim on the grounds that she had failed to submit medical evidence establishing that she sustained an injury due to the motor vehicle accident on November 1, 2001.<sup>2</sup>

By letter dated April 3, 2002, appellant requested reconsideration. She submitted a statement dated February 26, 2002 in which she described how the motor vehicle accident occurred and the injuries she sustained. Appellant also submitted a copy of a November 13, 2001 document authorizing her physical therapy office to provide copies of medical reports to her attorney and her insurance company.

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<sup>1</sup> Appellant's supervisor indicated on appellant's claim form that her regular work hours were 8:30 a.m. to 5:00 p.m.

<sup>2</sup> The Board notes that, when the Office's March 28, 2002 decision is read in its entirety and in the context of the other evidence of record, it appears that the Office accepted the occurrence of the November 1, 2001 employment incident and denied appellant's claim due to her failure to submit sufficient medical evidence.

By decision dated July 3, 2002, the Office denied appellant's request for further review of the merits of her claim on the grounds that the evidence submitted was not sufficient to warrant further consideration.<sup>3</sup>

The Board finds that appellant 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 Act<sup>4</sup> 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, 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.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must 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 he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident. As the Office did not dispute that the November 1, 2001 motor vehicle accident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.<sup>8</sup> In this case, appellant did not submit a rationalized medical report on the issue of causal relationship. Therefore, she did not meet her burden of proof in establishing that she sustained an injury in the performance of duty.

The Board further finds that that the Office properly refused to reopen appellant's claim for further merit consideration under 5 U.S.C. § 8128(a).

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<sup>3</sup> The record contains additional evidence that was not before the Office at the time it issued its July 3, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *See Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *See John J. Carlone*, 41 ECAB 354, 356 (1989).

<sup>7</sup> *See Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>8</sup> *See Gary L. Fowler*, 45 ECAB 365, 371 (1994).

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation. 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>10</sup>

In this case, the Office denied appellant's claim for a traumatic injury on the grounds that she failed to provide medical evidence establishing that she sustained a medical condition causally related to the November 1, 2001 motor vehicle accident. In support of her request for reconsideration, appellant submitted only her own description of the accident and her injuries and a document authorizing her physical therapy office to provide information to her attorney and her insurance company. This evidence does not constitute relevant and pertinent evidence not previously considered by the Office because appellant's claim was denied for lack of medical evidence from a physician. As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused her request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated July 3 and March 28, 2002 are affirmed.

Dated, Washington, DC  
June 2, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b).