United States Department of Labor
Employees' Compensation Appeals Board

SUSAN E. ULRICH, Appellant	)	
and	)	**Docket No. 04-1975**
	)	**Issued: December 22, 2004**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Holtsville, NY, Employer	)	

Appearances:
Susan E. Ulrich, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 4, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 5, 2004 denying her claim of an employment injury on March 2, 2004. Appellant also appealed a May 26, 2004 decision which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case and the nonmerit decision.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an employment injury in the performance of duty on March 2, 2004; and whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 4, 2004 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that she sustained a broken right front tooth and cuts and bruises on her left hand when she fell in the parking lot at work on March 2, 2004. She stopped work on March 2, 2004 and returned to work the following day.

The record contains a May 2, 2004 memorandum which indicates that the Office accepted that an employment incident occurred when appellant fell at work on March 2, 2004.[1]

By decision dated May 5, 2004, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury due to the fall at work on March 2, 2004.

By letter dated May 11, 2004, appellant requested reconsideration of her claim indicating that she was submitting copies of relevant medical records. The copy of the letter contained in the record did not contain any attached documents.[2]

By decision dated May 26, 2004, the Office refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Office indicated that appellant did not submit any medical evidence in connection with her May 11, 2004 reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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

[1] The Office indicated that an interview with an employing establishment official revealed that appellant fell on the employing establishment premises during her work hours.

[2] Appellant indicated that she had previously submitted these documents, but there is no indication in the record that they had previously been submitted.

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8]

ANALYSIS -- ISSUE 1

In the present case, appellant claimed that she sustained a broken right front tooth and cuts and bruises on her left hand when she fell in a parking lot at work on March 2, 2004. The Office accepted that an employment incident occurred when she fell at work on March 2, 2004. The Board finds that appellant did not submit any medical evidence to establish that she sustained an employment injury in the performance of duty on March 2, 2004. There is no indication in the record that appellant submitted medical evidence in support of her claim. As noted above, an employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9] Therefore, the Office properly found that appellant did not establish that she sustained an injury as alleged due to the accepted employment incident, *i.e.*, the fall on March 2, 2004. She has failed to establish a *prima facie* claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

[9] *See supra* note 7 and accompanying text.

[10] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[11] 20 C.F.R. §§ 10.606(b)(2).

[12] 20 C.F.R. § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

ANALYSIS -- ISSUE 2

By letter dated May 11, 2004, appellant requested reconsideration of her claim indicating that she was submitting copies of relevant medical records. However, the record does not contain any medical evidence submitted in conjunction with her reconsideration request and her May 11, 2004 letter did not contain any supporting argument. Therefore, the Office had no basis on which to reopen appellant's claim for further review on the merits. In the present case, appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its May 5, 2004 decision under section 8128(a) of the Act, because she 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 new evidence not previously considered by the Office.[14]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury in the performance of duty on March 2, 2004. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.608(b).

[14] Appellant submitted evidence to the Board in conjunction with her appeal before the Board. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. §§ 10.605-10.607.

ORDER

IT IS HEREBY ORDERED THAT the May 26 and 5, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member