

The employing establishment controverted appellant's claim on the grounds that he did not report his injury within 24 hours, noting that he reported the injury 6 days later. The employing establishment noted that it did authorize medical treatment.

By letter dated January 29, 2004, the Office advised appellant to submit medical evidence supportive of his claim. The Office received a radiology report dated February 5, 2004 from Dr. Scott D. Rand, a Board-certified radiologist, who provided findings of a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He found interim evolution of postsurgical high "T2W" signal intensity consistent with fluid and/or granulation tissue at C5-6 with mild residual vertebral body osteophytosis and unchanged bilateral bony foraminal narrowing due to uncinata process hypertrophy and unchanged multilevel spondylosis at C3-4, C4-5 and C6-7. He reported no evidence of cervical cord flattening or myelomalacic cord signal changes or abnormal postcontrast enhancement.

By decision dated March 5, 2004, the Office found the evidence of record was sufficient to establish that the January 9, 2004 incident occurred. The medical evidence was insufficient to establish that appellant sustained an injury causally related to the accepted incident. The Office denied his claim.

On March 19, 2004 appellant requested reconsideration. He stated that he was unable to provide a detailed diagnosis until he saw Dr. Spencer J. Block, his treating Board-certified neurosurgeon, who evaluated him on March 9, 2004. Appellant noted that he was diagnosed as having a bulging disc at C7 and that his condition did not involve any lost time from work. He indicated that he needed to have his claim resolved to pay for medical examinations and tests and to undergo therapy as prescribed by Dr. Block. Appellant offered to submit Dr. Block's report if the Office wished to review it and submitted Dr. Block's business card.

By decision dated June 7, 2004, the Office denied appellant's request for reconsideration finding that it neither raised substantive legal questions nor included pertinent new and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

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 filed within the applicable time limitation; that an injury was sustained while 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of 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 or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure 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.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁷

ANALYSIS -- ISSUE 1

In this case, there is no dispute that appellant was delivering mail on January 9, 2004 when he slipped on ice and hit his shoulder and the back of his head. The Board finds, however, that the medical evidence of record is insufficient to establish that this incident caused an injury.

The sole medical evidence of record is Dr. Rand's MRI scan report. Dr. Rand interpreted the diagnostic study to note multilevel spondylosis at C3-4, C4-5 and C5-6. However, the physician did not address whether appellant's cervical condition was caused or aggravated by the January 9, 2004 employment incident. Thus, his report is of reduced probative value of the issue of causal relationship.

There is no other medical evidence of record. Appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the January 9, 2004 employment incident. The Board finds that he has failed to satisfy his burden of proof in this case.

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ See also, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, 48 ECAB 692 (1997).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁸ 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.⁹ 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.¹⁰ 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 of the merits.

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's March 5, 2004 decision on March 19, 2004. He merely noted that he had not submitted any medical evidence supportive of his claim. The Board finds that appellant neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.

In support of his request, appellant submitted Dr. Block's business card. Although he offered to submit a medical report from the physician, which contained a diagnosis of a bulging disc at C7, he failed to do so. The business card itself is irrelevant to the underlying issue of causal relation. The Board finds that appellant did not submit any relevant and pertinent new evidence in support of his request.

Appellant has failed to show that the Office erroneously applied or interpreted a point of law, advance a point of law or fact not previously considered by the Office or submit relevant and pertinent new evidence not previously considered. The Office properly refused to reopen his claim for further reconsideration of the merits.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

⁸ 5 U.S.C. §§ 8101-8193. 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).

⁹ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁰ *Id.* at § 10.607(a).

ORDER

IT IS HEREBY ORDERED THAT the June 7 and March 5, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member