

**United States Department of Labor
Employees' Compensation Appeals Board**

CHATAUN J. BRYANT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dayton, OH, Employer**

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**Docket No. 04-1428
Issued: October 28, 2004**

Appearances:
Chataun J. Bryant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 5, 2004 appellant filed a timely appeal from an October 31, 2003 merit decision of the Office of Workers' Compensation Programs, denying her claim that she sustained a work-related injury on December 6, 2002. The record also contains a March 19, 2004 decision, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision and the nonmerit decision in this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on December 6, 2002; and (2) whether the Office properly refused to reopen appellant's claim for further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 6, 2002 appellant, then a 51-year-old general expeditor, filed a claim alleging that on that day she was struck in the head by a mail flat while in the performance of duty. She did not stop work.

By letter dated January 17, 2003, the Office advised appellant of the deficiencies in her claim and afforded her 30 days to submit additional evidence. The record includes a normal computerized tomography (CT) scan of the brain, taken on December 7, 2002. In a report dated January 22, 2003, Dr. Yeong-Cheol Koh, appellant's Board-certified surgeon, noted her history of headaches, but stated that he could not determine the cause of her dizziness and nausea. The physician referred her to a neurologist for further consultation. In a February 14, 2003, attending physician's report, Dr. Koh stated that he was "not sure" whether appellant's condition was employment related.

On February 20, 2003 the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury in the performance of duty.

On March 5, 2003 appellant requested reconsideration and on August 15, 2003 submitted a supplemental statement. By decision dated October 31, 2003, the Office modified the February 20, 2003 decision to find that, although the work-related incident occurred as alleged by appellant on December 6, 2002, no compensable injury resulted from the incident and her claim remained denied.

Appellant requested reconsideration on January 12, 2004 and submitted two emergency room reports dated November 1, 2003 concerning an injury to her left index finger. She also submitted a November 4, 2003 attending physician's report from Dr. Lawrence Goldstick, a Board-certified neurologist, who reported a history of appellant, on December 6, 2002, being hit in the back of the head by a container which resulted in dizziness, pain and lightheadedness. He initially treated her on February 11, 2003 for stenosis at C5-7 and placed her on disability from July 8 to 10, 2003. Dr. Goldstick diagnosed cervical stenosis, post-traumatic labyrinthitis and post-concussion syndrome. He checked a box "yes" to indicate that appellant's employment caused or aggravated her condition.

In a March 19, 2004 decision, the Office denied appellant's reconsideration request without reviewing the merits of the claim.

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 elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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 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 claimed condition, as well as any attendant disability 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

ANALYSIS -- ISSUE 1

It is not disputed that the December 6, 2002 incident occurred as alleged. Consequently, the medical evidence must be reviewed to determine whether that incident caused the claimed injuries.

The Board finds that the medical evidence is insufficient to establish that the December 6, 2002 incident caused or aggravated a medical condition. Appellant submitted a CT scan and a brain scan taken on December 7, 2002 which was normal. She also submitted January 22 and February 14, 2003 reports from Dr. Koh, however, he specifically indicated in the January 22, 2003 report, that the cause of appellant's condition was undetermined and, in his February 14, 2003 report, stated that he was "not sure" if employment activity caused or aggravated a medical condition.

As appellant has not submitted reasoned medical evidence explaining why the December 6, 2002 employment incident caused or aggravated a medical condition, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty on December 6, 2002.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁷

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

⁵ *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁶ 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).

⁷ 20 C.F.R. § 10.606(b)(2).

ANALYSIS -- ISSUE 2

The underlying issue in this case is a medical one, whether the medical evidence establishes that appellant sustained a work-related injury on December 6, 2002. In support of her request for reconsideration, she submitted Dr. Goldstick's November 4, 2003 report which noted her history of injury including her dizziness, light headedness and pain in the back of her head caused by the December 6, 2002 incident. He checked a box yes indicating that appellant's condition was causally related to the December 6, 2002 incident. This report satisfies the third criterion noted above for reopening a claim for merit review. It is new and it is relevant because it supports causal relationship between the employment incident and the diagnosed conditions. The Office, in its March 19, 2004 decision, did not explain why the report was insufficient to require reopening of the claim.

As noted previously, when a claimant advances a relevant legal argument not previously considered by the Office, such argument is sufficient to require the Office to reopen her claim for consideration of the merits.⁸ The requirements for reopening a claim for a merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof.⁹ Again, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.¹⁰

The Board finds that Dr. Goldstick's November 4, 2003 report constitutes relevant and pertinent new evidence not previously considered by the Office, such that review of the evidence and the case on its merits is warranted as to whether the December 6, 2002 work-related incident caused appellant's dizziness, pain and lightheadedness. Therefore, the Board finds that the Office improperly denied her request for a review of the merits of her claim under section 8128(a) of the Act.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury resulting from the December 6, 2002 work-related incident. The Board further finds that the Office's March 19, 2004 decision improperly refused to reopen her claim for further merit consideration under 5 U.S.C. § 8128(a).

⁸ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁹ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁰ See *supra* note 8, 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2003 be and is affirmed and that the March 19, 2004 decision be and is set aside and the case remanded for further action consistent with this decision.

Issued: October 28, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member