

FACTUAL HISTORY

On March 20, 2003 appellant, a 41-year-old associate advocate, filed a traumatic injury claim alleging that she injured her right knee, hip, right leg, left side of her buttocks and left knee when she fell in the parking lot that day.

In an April 1, 2003 letter, the employing establishment controverted appellant's claim on the grounds that her injury was not sustained in the performance of duty. The employing establishment indicated that the parking lot where appellant fell was not owned or operated by the Federal Government and that it is a privately owned parking lot.

In support of her claim, appellant submitted an April 2, 2003 verification of treatment note and various patient visit records from Kaiser Permanente.

In a decision dated May 20, 2003, the Office denied appellant's claim on the basis that she failed to establish an injury in the performance of duty. The Office found the evidence of record insufficient to establish that parking lot where appellant sustained her injury was managed, owned or operated by the Federal Government or the employing establishment.

Subsequent to the May 20, 2003 decision, the Office received additional medical evidence.

Appellant requested reconsideration in a letter dated March 18, 2004, and submitted statements from James P. Goins, a member of the "First Aid Team" and employing establishment employee and Alice Pope, an employing establishment employee. Their statements indicated that appellant had been injured and that they each saw the injury. Additionally, appellant submitted a copy of an excerpt from "Questions and Answers about the Federal Employees' Compensation Act (FECA), Employee Information Sheet.," and a Form CA-16 documenting medical treatment for the effects of the fall. Appellant also contended that she was injured in the performance of duty as she was injured at 9:40 a.m. and her tour of duty begins at 9:30 a.m. and ends at 6:00 p.m., and that her injury occurred on Federal Government premises.

By decision dated August 11, 2004, the Office denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

Section 8128(a) of the Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.² Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.³

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁴ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁶

ANALYSIS

Appellant's March 18, 2004 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant contended that she was injured in the performance of duty as she was injured at 9:40 a.m. and her tour of duty began at 9:30 a.m. She also argued that her injury occurred on Federal Government premises. Appellant's arguments regarding her tour of duty and that her injury was sustained on government premises do not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit relevant new evidence with her March 18, 2004 request for reconsideration. The Office initially denied appellant's claim for hip, leg and buttock injuries on the basis that she failed to establish an injury in the performance

¹ 5 U.S.C. § 8128(a) (“[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

² *Raj B. Thackurdeen*, 54 ECAB ____ (Docket No. 02-2392, issued February 13, 2003); *Veletta C. Coleman*, 48 ECAB 367 (1997)

³ 20 C.F.R. § 10.608(a); *see Veletta C. Coleman*, *supra* note 2.

⁴ 20 C.F.R. §§ 10.606(b)(1)-(2); *see Sharyn D. Bannick*, 54 ECAB __ (Docket No. 03-567, issued April 18, 2003).

⁵ 20 C.F.R. § 10.608(b).

⁶ *Id.*

of duty. The Office found the evidence of record insufficient to establish that the parking lot where appellant sustained her injury was managed, owned or operated by the Federal Government or the employing establishment. With her March 18, 2004 reconsideration request, appellant submitted statements from Mr. Goins and Ms. Pope. These statements are irrelevant to the issue at hand, which is whether the parking lot where the injury occurred was managed, owned or operated by the Federal Government or the employing establishment which, if so, would thereby establish that appellant sustained an injury in the performance of duty. However, the employees merely stated that appellant was injured. Appellant also submitted copy of an excerpt from "Questions and Answers about the Federal Employees' Compensation Act (FECA), Employee Information Sheet.," and a Form CA-16. These documents are also irrelevant to establishing whether her injury occurred on employment premises. The Board finds that the evidence submitted on reconsideration was insufficient to require reopening of appellant's case for further review of the merits of her claim as it fails to address the relevant issue in this case.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 11, 2004 is affirmed.

Issued: May 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member