



Lake Mohave from Yuma Cove on a boat heading toward Cottonwood Cove, a small object flew into my right eye.” Appellant’s supervisor noted on the form that her regular working hours were Monday through Friday, 7:00 a.m. to 3:30 p.m., that he received notice of the claimed injury on March 25, 2005 and that she first sought treatment for her claimed injury on March 24, 2005. She did not stop work.

In a letter dated April 20, 2005, the Office requested that appellant submit additional evidence in support of her claim. It noted that it was not clear whether or not her claimed injury resulted from the performance of her duties as the injury occurred at 8:45 p.m. on March 23, 2005, which was more than five hours after the end of her workday at 3:30 p.m. The Office asked appellant to explain why she was on a boat at Lake Mohave at the time of the injury and what job-related activity she was performing at that time. Moreover, it noted that no diagnosis of any condition resulting from the claimed March 23, 2005 injury had been provided and requested that she submit a comprehensive medical report.<sup>1</sup> The Office provided appellant 30 days to submit information and evidence.

By decision dated May 20, 2005, the Office denied appellant’s claim on the grounds that the evidence submitted was insufficient to establish that the claimed event occurred in the performance of her duties as a biological science technician.<sup>2</sup> The Office indicated that she was asked to submit information and evidence regarding this matter but failed to do so within the allotted time.

On August 21, 2005 appellant requested reconsideration of her claim and submitted an undated statement which noted:

“I had turned my treatment [sic] after my injury and am turning in another receipt for treatment. I waited less than 72 hours for treatment since the object flew into my eye in the evening. Since the irritation did not go away, I went into the doctor on a Friday.”

By decision dated September 21, 2005, the Office denied appellant’s request for further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> 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

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<sup>1</sup> The Office also requested that appellant explain why she did not file her claim form until April 4, 2005.

<sup>2</sup> The Office also noted that appellant did not submit medical evidence which provided a diagnosis that was connected to the claimed event.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>6</sup> The phrase “while in the performance of duty” has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”<sup>7</sup>

### ANALYSIS -- ISSUE 1

Appellant has not submitted sufficient evidence to show that her claimed injury constituted an employment incident that occurred in the performance of her duties as a biological science technician. She was provided with an opportunity to clarify how her claimed injury occurred in the performance of duty, but failed to submit such information or evidence which would shed further light on this matter. The Office pointed out to appellant that she claimed that the injury occurred at 8:45 p.m. on March 23, 2005, but that this was at a time which was more than 5 hours after the end of her workday at 3:30 p.m. The Office requested that appellant explain this circumstance, but she did not provide any information or evidence in response to this request. The Office also asked her to identify what particular work duty she was performing while she was riding in a boat at the time of her alleged injury, but she did not provide any further explanation. Appellant has not explained how, on March 23, 2005, she was engaged in her employer’s business, at a place where she was reasonably expected to be in connection with the employment or was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.<sup>8</sup>

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). 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. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury. See *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>6</sup> *Mary Kokich*, 52 ECAB 239, 240 (2001).

<sup>7</sup> *Kathryn A. Tuel-Gillem*, 52 ECAB 451, 452-53 (2001). In addressing this issue, the Board has stated that to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master’s business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. See *id.*

<sup>8</sup> *Id.*

Appellant did not establish the existence of an employment factor for the further reason that her claim lacks specificity regarding the claimed mechanism of injury. She did not submit sufficient evidence to establish that she experienced an employment incident in a specific time, place and manner.<sup>9</sup> Appellant did not provide any detail regarding what object “flew into” her right eye or what duration it stayed there. Under these circumstances, her assertion that she was exposed to something that flew into her right eye must be considered vague and incomplete.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>11</sup> the Office’s regulations provide that the evidence or argument submitted by 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.<sup>12</sup> 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.<sup>13</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>14</sup>

### **ANALYSIS -- ISSUE 2**

In support of her reconsideration request, appellant submitted a brief statement in which she discussed the timing of treatment she sought for her claimed injury on March 23, 2005.<sup>15</sup> However, this information would not relate to the main issue of the present case, *i.e.*, whether she submitted sufficient information and evidence to show that she sustained an employment incident that occurred in the performance of her duties as a biological science technician. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>16</sup>

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<sup>9</sup> See *supra* note 5.

<sup>10</sup> Given that appellant did not establish an employment incident, it would not be necessary to consider any medical evidence of record.

<sup>11</sup> 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).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2).

<sup>13</sup> 20 C.F.R. § 10.607(a).

<sup>14</sup> 20 C.F.R. § 10.608(b).

<sup>15</sup> The note indicated, “I waited less than 72 hours for treatment since the object flew into my eye in the evening. Since the irritation did not go away, I went into the doctor on a Friday.”

<sup>16</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Appellant has not established that the Office improperly denied her request for further review of the merits of its May 20, 2005 decision under section 8128(a) of the Act, because the evidence she submitted 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 constitute relevant and pertinent new evidence not previously considered by the Office.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 23, 2005. The Board further finds that the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' September 21 and May 20, 2005 decisions are affirmed.

Issued: February 7, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board