United States Department of Labor
Employees' Compensation Appeals Board

A.Y., Appellant	)	
and	)	**Docket No. 06-1422**
	)	**Issued: October 6, 2006**
DEPARTMENT OF AGRICULTURE, NATIONAL FOREST, Boise, ID, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 22, 2006 appellant filed a timely appeal of a January 30, 2006 merit decision from the Office of Workers' Compensation Programs denying her claim for compensation and a March 14, 2006 nonmerit 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 and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury in the performance of her duty on August 7, 2005; and (2) whether the Office properly denied her request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 19, 2005 appellant, a 60-year-old camp crew member, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2005 she tripped over a stake and fell on a

cubie (a five gallon bladder filled with water).[1] She stated that she landed on the cubie with her stomach and rolled over on her back. This incident was witnessed by several coworkers.

Appellant was treated at Weiser Memorial Hospital on August 7, 2005. An attending physician's report was signed by George Roth, a physician's assistant, on August 7, 2005. Mr. Roth stated that appellant had cervical, thoracic and knee strains. Appellant was released back to work on August 7, 2005. However, she was limited to light duty for the next two days, until August 9, 2005.

By letter dated December 23, 2005, the Office advised appellant that she needed to submit additional evidence with respect to her claim within 30 days. It requested a physician's opinion explaining "how the reported work incident caused the claimed injury."

Appellant submitted a letter dated January 30, 2006, detailing a history of her experience subsequent to the August 7, 2005 incident. Appellant felt well enough to return to work shortly after the incident. However, when unloading a truck while on duty between September 4 and 16, 2005, she began reexperiencing back pain. After attempting self-treatment, she sought the services of a chiropractor.

Appellant submitted the Weiser Memorial Hospital emergency service record from her August 7, 2005 visit, completed by Dr. Deland R. Barr, an Board-certified osteopath.[2] He diagnosed a sprained knee, a bilateral rhomboid (shoulder) strain as well as degenerative joint disease of the cervical spine at the C5-6 disc. Appellant also submitted a radiological interpretation of her spine by Dr. Tim Hall on August 7, 2005[3] reporting no abnormalities. Appellant submitted numerous documents detailing chiropractic treatment from Back to Beck Chiropractic.

In a decision dated January 30, 2006, the Office denied appellant's claim for compensation. It accepted that the employment incident occurred on August 7, 2005, as alleged, but found that the medical evidence was insufficient as there was no diagnosis from a physician relating an injury to the employment incident.

On February 1, 2006 appellant requested reconsideration of the January 30, 2006 decision. She contended that there was a doctor's signature on the Weiser Memorial Hospital emergency service record. In addition, appellant resubmitted copies of the medical records.

By decision dated March 14, 2006, the Office denied the request for reconsideration, finding that there was no new medical evidence and that the evidence did not warrant further merit review.

[1] The form was signed by appellant and dated August 7, 2005.

[2] The Board notes that the evidence of record showed that the physician on call was a "Barr" and that appellant's prescription, dated August 7, 2005, included Dr. Deland R. Bard, D.O. in the heading.

[3] The Board was unable to determine Dr. Hall's specialties or certifications.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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.

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.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] To establish a causal relationship between the condition, as well as any attendant disability claimed 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.[7]

ANALYSIS -- ISSUE 1

There is no dispute that appellant slipped and fell on a cubie while in the performance of duty on August 7, 2005, as alleged. The issue is whether this employment incident caused an injury, which is medical in nature. The Board finds that the medical evidence of record is not sufficient to establish that appellant sustained an injury as a result of the August 7, 2005 employment incident. Whether the employment incident caused a personal injury generally can be established only by probative medical evidence.

Dr. Barr reported in the emergency services records from Weiser Memorial Hospital that appellant slipped and injured her knee and upper back while camping. He diagnosed a sprained knee, a bilateral rhomboid strain and DJ C-spine at C5-6 disc. However, Dr. Barr did not relate the diagnoses to the August 7, 2005 employment incident. He did not provide a full history of the accepted incident or a medical explanation detailing how the incident caused or contributed to the diagnosed conditions.

With regard to the August 7, 2005 report by the physician's assistant Mr. Roth, the Board notes that a medical report cannot be considered as probative medical evidence unless the person

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

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Shirley A. Temple*, 48 ECAB 404 (1997).

[7] *Michael E. Smith*, *supra* note 5.

completing the report is a physician as defined in 5 U.S.C. § 8101(2).[8] The record reflects that Mr. Roth is a physician's assistant. His report is of no probative value as he is not a physician under the Act.[9]

Appellant has not submitted any rationalized medical evidence establishing a causal relationship between the August 7, 2005 employment incident and her claimed conditions. She has not met her burden of proof to establish that she sustained an employment-related injury on August 7, 2005, as alleged.

CONCLUSION -- ISSUE 1

The Board finds that appellant has not established that she sustained an injury in the performance of her duty on August 7, 2005, as alleged.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 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) constitute 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 standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.[13]

ANALYSIS -- ISSUE 2

On February 1, 2006 appellant requested reconsideration of the Office's January 30, 2006 decision denying her claim for compensation. Appellant resubmitted information previously considered by the Office and pointed out that a physician had signed the emergency service record.

[8] *See e.g., Merton J. Sills*, 39 ECAB 572, n.3 (1988).

[9] *See Curtis L. Lord*, 33 ECAB 1481 (1982).

[10] 5 U.S.C. § 8128.

[11] 20 C.F.R. § 10.606(b)(2).

[12] 20 C.F.R. § 10.607(a).

[13] 20 C.F.R. § 10.608(b).

All of the information submitted for reconsideration had previously been considered by the Office. The Board finds that this evidence is insufficient to reopen her claim for further merit review.[14] As to appellant's argument that a physician signed the emergency service record, the argument does not advance her claim. The emergency service record does not, as the Office observed, provide "a diagnosis which could be connected to the event." As the Office stated when denying review of the case on its merits, "no new medical evidence was provided to support a causal relationship."

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.[15]

CONCLUSION -- ISSUE 2

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[14] It is well established that evidence which repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case. *Dwayne Avila*, 57 ECAB ___ (Docket No. 06-366, issued June 21, 2006); *see also Eugene F. Butler*, 36 ECAB 393 (1984).

[15] *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 14 and January 30, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board