United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 07-99**
	)	**Issued: March 2, 2007**
DEPARTMENT OF THE ARMY, LOS ALAMITOS ARMY AIRFIELD, Los Alamitos, CA, 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 October 16, 2006 appellant filed a timely appeal from an August 17, 2006 Office of Workers' Compensation Programs' decision, denying her request for a hearing and an April 25, 2006 decision, denying her claim for an injury on August 5, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury on August 5, 2005 in the performance of duty; and (2) whether the Office abused its discretion in denying her request for a hearing.

FACTUAL HISTORY

On August 5, 2005 appellant, then a 34-year-old air traffic control specialist, filed a traumatic injury claim alleging that she experienced chest pain while she was talking on the telephone. David Seibert, a coworker, indicated that she complained of chest pain radiating up

her left shoulder. Lisa Kutschera, appellant's supervisor, stated that when Mr. Seibert notified her that appellant was having chest pain, she instructed another employee to contact the fire department. The fire department medics performed an evaluation and recommended that appellant be transported to the hospital for further evaluation.

The record contains hospital discharge instructions for "Chest Pain, Non Cardiac" from Dr. Peyam Vafadari. Also of record is an August 5, 2005 prescription for pain medication signed by Dr. Charles J. Rennie.

On March 21, 2006 the Office requested additional evidence, including medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to the August 5, 2005 work incident. No further evidence was submitted at that time.

By decision dated April 25, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained an injury on August 5, 2005 in the performance of duty.

By letter postmarked July 10, 2006, appellant requested an oral hearing and submitted additional factual evidence. She stated that on August 5, 2005 she received a telephone call from a citizen who complained of aircraft noise. The caller was rude and appellant became upset due to working long hours and being understaffed. She felt a sharp pain in her chest radiating down her left arm, which persisted for several minutes. Appellant indicated that the emergency room physician determined that her condition was not cardiac related. He told her that it was a possible muscular/skeletal problem. Ms. Kutschera stated that July and August 2005 were very busy and stressful because airfield operations were at less than 50 percent staffing due to military deployments and lack of qualified temporary replacements.

By decision dated August 17, 2006, the Office denied appellant's July 10, 2006 request for a hearing on the grounds that it was untimely filed more than 30 days after the April 25, 2006 decision. The Office exercised its discretion and determined that the issue in the case, which was medical in nature, could be equally well addressed through a request for reconsideration and additional evidence.[1]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3]

[1] Appellant submitted additional evidence on appeal to the Board. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[2] 5 U.S.C. §§ 8101-8193.

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

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. There are two components involved in establishing the fact of injury. 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.[4] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5] An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS -- ISSUE 1

The Board finds that the evidence is insufficient to establish that appellant sustained an injury on August 5, 2005 in the performance of duty. Appellant alleged that on August 5, 2005 she felt chest pain radiating to her left shoulder while she was talking on the telephone at work. However, there is no medical evidence establishing that she sustained a specific injury as a result of the work incident.

The record contains hospital discharge instructions for "Chest Pain, Non Cardiac" from the emergency room physician, Dr. Vafadari. Also of record is an August 5, 2005 prescription for pain medication signed by Dr. Rennie. However, there is no medical evidence which contains a specific diagnosis of appellant's condition. The discharge instructions indicate that appellant's chest pain was not caused by a cardiac condition. However, no other diagnosis of her condition is provided. The prescription for pain medication does not contain a diagnosis. Additionally, there is no medical evidence explaining how appellant's condition was caused or aggravated by the telephone call on August 5, 2005. The medical evidence fails to establish that appellant sustained a specific injury or condition as a result of the August 5, 2005 work incident. Therefore, the Office properly denied her claim.

[4] *John J. Carlone*, 41 ECAB 354 (1989).

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

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 5.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.[7] A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.[8] A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which the hearing is sought.[9] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[10] In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[11]

ANALYSIS -- ISSUE 2

Appellant's request for a hearing was postmarked July 10, 2006, more than 30 days after the Office's April 25, 2006 decision. Therefore, appellant was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that the issue in the case, the nature of her claimed injury and its relationship to her employment, could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a hearing in its August 17, 2006 decision.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury on August 5, 2005 in the performance of duty. The Board further finds that the Office did not abuse its discretion in denying her untimely request for a hearing.

[7] 5 U.S.C. § 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. *See Charles J. Prudencio*, 41 ECAB 499 (1990).

[8] 20 C.F.R. § 10.616(a).

[9] *James Smith*, 53 ECAB 188 (2001).

[10] 20 C.F.R. § 10.616(b).

[11] *James Smith*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 17 and April 25, 2006 are affirmed.

Issued: March 2, 2007
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