

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

A.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
FEDERAL AIR MARSHAL SERVICE,)
Coppell, TX, Employer)

Docket No. 07-2121
Issued: February 22, 2008

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2007 appellant filed a timely appeal from a June 4, 2007 decision of the Office of Workers' Compensation Programs that denied her claim and a July 9, 2007 decision that denied her request for reconsideration. 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 met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly refused to reopen her claim for further review of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 5, 2007 appellant, then a 36-year-old air marshal, filed a Form CA-1, traumatic injury claim, alleging that she hurt her right knee while walking on March 25, 2007. She stated

that she did not know where the injury occurred. In support of her claim, appellant submitted an April 13, 2007 report from Dr. Amir M. Khan who stated that appellant reported that she was “walking at work and may have injured her knee on the walking trail that she was using. She does not recall a specific traumatic event.” Dr. Khan provided examination findings and reviewed a March 29, 2007 x-ray as negative, recommended a magnetic resonance imaging (MRI) scan and provided restrictions to appellant’s physical activity. An MRI scan of the right knee on April 18, 2007 demonstrated minimal right knee joint effusion and was otherwise normal. In form reports dated April 20, 2007, Dr. Khan advised that appellant could return to her regular duties.

The employing establishment controverted the claim. By letter dated May 2, 2007, the Office informed appellant of the evidence needed to establish her claim. In an April 20, 2007 treatment note, Dr. Khan noted the MRI scan findings and diagnosed right knee pain. By decision dated June 4, 2007, the Office denied the claim on the grounds that the evidence submitted was insufficient to establish that the incident occurred as alleged. On June 18, 2007 appellant requested reconsideration, stating that she had not received the Office’s May 2, 2007 letter. In a nonmerit decision dated July 9, 2007, the Office denied her reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.¹ In order to determine whether an employee 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 is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.²

When an employee claims a traumatic injury in the performance of duty, he or she must establish the “fact of injury,” namely, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.³

ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that she sustained an injury in the performance of her federal duties. The evidence submitted is insufficient to establish that she actually experienced an employment incident at the time, place and in the manner alleged.⁴

¹ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

² *Tracey P. Spillane*, 54 ECAB 608 (2003).

³ *Paul Foster*, 56 ECAB 208 (2004).

⁴ *Id.*

Appellant provided no detailed account of or apparent cause for her claimed right knee injury. On her claim form, she stated that she injured her right knee while walking and did not know where the injury occurred. Dr. Khan reported a history that appellant stated that she may have injured her knee on a walking trail at work but that she did not recall any specific traumatic event. Appellant did not present any evidence, such as witness statements, to substantiate that she sustained an incident involving her right knee. She submitted no evidence about the specific mechanism of injury or describe a specific event, incident or exposure at a definite time, place and manner. These inconsistencies in the evidence cast serious doubt as to the validity of her claim.⁵ As appellant did not establish an incident as alleged, the Board need not discuss the probative value of the medical evidence submitted.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act⁷ vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁸ Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁹ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS -- ISSUE 2

With her June 14, 2007 reconsideration request, appellant asserted that she did not receive the Office's May 2, 2007 letter. In the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received by that individual. Under the mailbox rule, evidence of a properly addressed letter together with

⁵ *Id.*

⁶ *Id.*

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

¹² *Kevin M. Fatzner*, 51 ECAB 407 (2000).

evidence of proper mailing may be used to establish receipt.¹³ The record demonstrates that the June 2, 2007 Office letter was mailed to 1---9 Settlers Trail, Keller, Texas, appellant's address of record. There is no evidence of record to rebut the presumption of receipt by appellant under the mailbox rule. Appellant therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, she was 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).¹⁴

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. She therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request by its July 9, 2007 decision.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury causally related to her federal employment and that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).¹⁵

¹³ *Joseph R. Giallanza*, 55 ECAB 186 (2003).

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ The Board notes that appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to submit a valid request for reconsideration with the Office. 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 9 and June 4, 2007 be affirmed.

Issued: February 22, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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