

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

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**G.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
West Memphis, AR, Employer**

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**Docket No. 09-187  
Issued: July 7, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 27, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' April 11, 2008 decision denying his claim for compensation and a September 22, 2008 decision denying his 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 his burden of proof in establishing that he sustained a traumatic injury on August 25, 2007 in the performance of duty; and (2) whether the Office properly denied his request for reconsideration without further merit review.

**FACTUAL HISTORY**

On February 29, 2008 appellant, then a 29-year-old carrier, filed a traumatic injury claim alleging that on August 25, 2007 heat at work caused him to sustain heat exhaustion with muscle cramps in his back and nausea. He did not stop work.

On March 6, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. In particular, it requested a medical report with a physician's opinion on how the reported work incident caused or aggravated the claimed injury.

In an April 11, 2008 decision, the Office denied appellant's claim for compensation finding that, although the evidence supported that the claimed event occurred, there was no medical evidence that provided a diagnosis which could be connected to the events.

Appellant requested reconsideration on September 4, 2008.

In a September 22, 2008 decision, the Office denied appellant's reconsideration request without a merit review.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>3</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007).

<sup>3</sup> *Id.*

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 employee.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleges that he sustained heat exhaustion, back muscle cramps and nausea at work on August 25, 2007. The Office accepted that the claimed events occurred. However, appellant has not submitted any medical evidence to establish that the August 25, 2007 employment incident caused or aggravated a diagnosed medical condition.

On March 6, 2008 the Office advised appellant of the medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence. However, appellant did not submit any medical evidence that was received prior to the Office's April 11, 2008 decision. The record does not contain any medical reports from a physician explaining how a specific job duty performed on August 25, 2007 caused or aggravated heat exhaustion, back muscle cramps or nausea. As noted, part of a claimant's burden of proof includes the submission of rationalized medical evidence addressing whether there is a causal relationship between the employee's diagnosed condition and employment factors. Consequently, appellant did not provide the medical evidence required to establish a *prima facie* claim for compensation.<sup>5</sup>

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

To require the Office to reopen a case for merit review under section 8128(a), 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>6</sup> Section 10.608(b) of Office regulations provide 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.<sup>7</sup>

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

Appellant's request for reconsideration consists of an appeal request form with a checkmark next to "reconsideration." However, he did not satisfy any of the three criteria required to reopen a case for merit review. Appellant's request did not show that the Office erroneously applied the law because he did not specify any point of law that was erroneously applied or interpreted. His request form also did not advance any new relevant legal arguments

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<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *See A.C.*, 60 ECAB \_\_\_ (Docket No. 08-1453 issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB \_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>7</sup> 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB \_\_\_ (Docket No. 07-2265, issued April 28, 2008).

not previously considered by the Office. In addition, appellant did not submit any medical evidence, which is necessary to determine the underlying issue of whether he has submitted sufficient medical evidence establishing a causal relationship between his work duties and his diagnosed condition. As a result, no relevant and pertinent new evidence supports his request for reconsideration.

Consequently, the Office properly denied appellant's request for reconsideration without further merit review.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty. The Board also finds that the Office properly denied appellant's request for reconsideration without a merit review.<sup>8</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated September 22 and April 11, 2008 are affirmed.

Issued: July 7, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> Appellant submitted new evidence on appeal. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. *See* 20 C.F.R. § 501.2(c).