

In a letter dated August 27, 2008, the Office requested additional factual and medical evidence in support of appellant's claim. It allowed 30 days for a response.

By decision dated September 29, 2008, the Office denied appellant's claim finding that there was no medical evidence establishing a diagnosis that could be connected to her accepted employment incident.¹

LEGAL PRECEDENT

The Office's regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.² In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that 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. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.³

ANALYSIS

Appellant submitted a claim form in support of an injury occurring on August 20, 2008. She described the employment incident and included a witness' statement substantiating her description of her fall from a ladder in the performance of duty. The Office requested additional factual and medical evidence in support of appellant's claim on August 27, 2008 and allowed 30 days for a response. Appellant did not respond to the Office's request within the allotted 30-day period. By decision dated September 28, 2008, the Office denied the claim on the grounds that she failed to establish a *prima facie* claim for a traumatic injury as she submitted no medical evidence.

In this case, appellant failed to meet her burden of proof to establish that the accepted employment incident caused a medical condition. While she described the incident that she believed caused a medical condition, in order to establish her claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her condition was caused or aggravated by the employment incident. Appellant submitted no medical evidence.

¹ Following the Office's September 29, 2008 decision, appellant submitted additional evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not consider the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.5(ee).

³ *Steven S. Saleh*, 55 ECAB 169, 171-172 (2003).

With her appeal to the Board, appellant described the course of her treatment and noted that a CA-16 form had been issued. She also submitted several medical reports. There is no indication that any of this medical evidence was ever submitted to the Office prior to issuance of its September 28, 2008 decision. The Board cannot consider this evidence for the first time on appeal, because its review is limited to the evidence of record which was before the Office at the time of its final merit decision.⁴ Appellant may forward this evidence to the Office with a request for reconsideration.⁵

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty on August 20, 2008.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2009
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

⁴ 20 C.F.R. § 501.2(c).

⁵ See 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605-10.610; *James A. Castagno*, 53 ECAB 782 (2002).