

ISSUE

The issue is whether the Office properly declined to reopen appellant's claim for further consideration of the merits of her claim in accordance with section 8128(a) of the Federal Employees' Compensation Act.

FACTUAL HISTORY

On July 18, 2008 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim alleging that she fell on June 16, 2008 at 11:45 am on the employing establishment walkway injuring her right wrist and hand. The employing establishment stated that she gave conflicting accounts of whether she tripped leaving or entering the building.

The Office requested additional factual and medical evidence from appellant in a letter dated June 26, 2008. It allowed 30 days for a response. Appellant responded on July 10, 2008 and stated that she fell after returning from the parking lot with her daughter. The medical evidence establishes that she sustained a right wrist fracture in the fall.

In a letter dated July 27, 2008, the employing establishment challenged appellant's claim on the grounds that she was not in the performance of her duties at the time the injury occurred. It stated that she was not on the clock, that she was walking in the parking lot and that she was conducting personal business at the time the injury occurred. The employing establishment noted that appellant clocked back in at 11:50 a.m.

The Office denied her claim on July 30, 2008 finding that she was not in work status at the time her injury occurred and that therefore the injury did not occur in the performance of her job duties. It stated that, although appellant was on the employing establishment premises at the time her injury occurred, there was no evidence that she was engaged in activities related to her employment.

Appellant requested reconsideration on November 3, 2008 and submitted a narrative statement alleging that on June 16, 2008 she went to lunch off the clock. She stated that as she was returning from lunch she fell on the employing establishment walkway which was in poor condition. Appellant stated that she was on the employing establishment premises on her way to clock in when she fell. She noted that she did not have an assigned lunch area. By decision dated November 17, 2008, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that her request for reconsideration did not include new and relevant evidence or raise substantial legal questions.

LEGAL PRECEDENT

The Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets

³ 5 U.S.C. §§ 8101-8193, 8128(a).

forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by the Office, or includes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608 of the Office's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant alleged that she fell on June 16, 2008 in the performance of duty, but the Office denied her claim on the grounds that the evidence did not establish that she was performing activities incidental to her federal employment at the time the injury occurred. In her statement accompanying her request for reconsideration, she alleged that she returned from her lunch to clock in at the employing establishment when she fell on the employing establishment premises. As the central issue in this case is whether appellant was performing activities incidental to her employment at the time the injury occurred, the Board finds that her narrative statement is relevant to the issue in the case. The record does not contain another detailed statement from her describing her account of the timing and events of June 16, 2008. As such, appellant's narrative statement constitutes relevant and pertinent new evidence and is sufficient to require the Office to reopen her claim for consideration of the merits.⁶

CONCLUSION

The Board finds that this case is not in posture for decision as appellant submitted relevant and pertinent new evidence in support of her request for reconsideration which requires the Office to reopen her claim for consideration of the merits. On remand, the Office should conduct any further development of the factual and medical evidence, to be followed by the issuance of a decision on the merits of appellant's claim.

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

⁶ The Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours of work, injuries occurring on the premises of the employing establishment while the employee is going to or from work, before or after working hours or at lunch time, are compensable. *D.L.*, 58 ECAB 667 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2008 Office of Workers' Compensation Programs' decision is set aside and remanded for additional development consistent with this decision of the Board.

Issued: August 4, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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