

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

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L.B., Appellant)	
)	
and)	Docket No. 10-469
)	Issued: June 2, 2010
DEPARTMENT OF THE NAVY, HUMAN)	
RESOURCES, Washington DC, Employer)	
)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument April 7, 2010

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2009 appellant filed a timely appeal of the September 24, 2009 merit decision of the Office of Workers' Compensation Programs and a nonmerit decision issued November 13, 2009. 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 on July 31, 2009 in the performance of duty; and (2) whether the Branch of Hearings and Review properly denied her request for a review of the written record as untimely.

FACTUAL HISTORY

On August 18, 2009 appellant, then a 56-year-old police officer, filed a traumatic injury claim alleging on July 31, 2009 she had a headache, fever of 102 degrees, nausea and was dehydrated while performing her federal job duties. The Office requested additional information from appellant and the employing establishment by letter dated August 20, 2009.

The employing establishment responded on August 21, 2009 and controverted appellant's claim on the grounds that she was alleging that "flu-like" symptoms caused her disability for work. It noted that appellant filed a claim after she was transported by ambulance to the Sibley Memorial Hospital Emergency Room on July 31, 2009. A note dated August 20, 2009 from the employing establishment clinic indicated that appellant received a diagnosis of viral syndrome and that on that date she was cleared to return to work without restrictions. On July 31, 2006 appellant received discharge instructions from Sibley Memorial Hospital diagnosing viral syndrome.

By decision dated September 24, 2009, the Office denied appellant's claim findings that she failed to submit the necessary factual and medical evidence to establish her claim. Appellant requested a review of the written record on October 28, 2009.

By decision dated November 13, 2009, the Branch of Hearings and Review denied appellant's request for review of the written record as untimely and stated that her claim could be addressed by requesting reconsideration from the Office and submitting evidence not previously considered.

At the oral argument, appellant alleged that the employing establishment called for the ambulance and that the employing establishment should be responsible for her medical expenses as a result of her transport to the hospital.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

In order to determine whether an employee actually 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 to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

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

background, supporting such a causal relationship.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

Appellant filed a claim alleging on July 31, 2009 she developed a fever, headache and nausea while performing her federal job duties. The record establishes that she was transported to the hospital due to these symptoms and diagnosed with viral syndrome. However, the Board finds that there is no factual or medical evidence attributing appellant's diagnosed condition to her federal duties on July 31, 2009. Appellant has not implicated specific aspects of her federal employment which she felt caused or contributed to her diagnosed condition. Furthermore, the medical evidence does not contain any statement relating her viral syndrome to her employment or explaining the nature of any relationship between appellant's condition and her employment. As the record lacks the necessary factual and medical evidence to support appellant's claim, the Board finds that she did not meet her burden of proof to establish a traumatic injury on July 31, 2009.

The Office, however, did not adjudicate the issue of appellant's incurred medical expenses. It has broad discretionary authority in the administration of the Act to achieve the objective of section 8103.⁶ It has discretionary authority to approve unauthorized medical care which it finds necessary and reasonable and is required to exercise that discretion.⁷ Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 authorizing medical treatment and expenses within four hours.⁸ The federal regulations provide that in unusual or emergency circumstances the Office may approve payment for medical expenses incurred otherwise than as authorized in section 10.303.⁹ It may approve payment for medical expenses incurred even if a Form CA-16 authorizing

⁴ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁵ *James Mack*, 43 ECAB 321 (1991).

⁶ 5 U.S.C. § 8103.

⁷ *Michael L. Malone*, 49 ECAB 194 (1997); *Thomas W. Keene*, 42 ECAB 623 (1991); *Val D Wynn*, 40 ECAB 666 (1989).

⁸ 20 C.F.R. § 10.300(b).

⁹ *Id.* at § 10.304.

medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis.¹⁰

Appellant developed “flu-like” symptoms including a fever of 102 degrees on July 31, 2009 while performing her duties as a police officer. The evidence of record suggests that the employing establishment arranged for her transport by ambulance to a local hospital. In denying appellant’s claim for a traumatic injury, the Office did not consider whether emergency circumstances or unusual circumstances were present or whether this was a situation in which reimbursement of medical expenses was appropriate. The circumstances of the case warrant additional development of this issue. The case will be remanded to the Office for further development consistent with this decision of the Board, followed by an appropriate decision.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act,¹¹ concerning a claimant’s entitlement to a hearing before an Office representative, states: “Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”¹²

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹³ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹⁴

Section 20.615 of Title 20 of the Code of Federal Regulations provides in part: “Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.”¹⁵

ANALYSIS -- ISSUE 2

The Branch of Hearings and Review determined that appellant’s October 28, 2009 request for a review of the written record was not timely filed as it was submitted more than 30 days after issuance of the Office’s September 24, 2009 decision. The Branch of Hearings and Review properly denied appellant’s request for review of the written record as a matter of right.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a) (October 1990).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Id.* at § 8124(b)(1).

¹³ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹⁴ *Id.*

¹⁵ 20 C.F.R. § 10.615; *see also P.P.*, 58 ECAB 673 (2007).

The Branch of Hearings and Review proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a review of the written record in this case. It determined that a review of the written record was not necessary as the issue in the case was medical in nature and could be resolved through the submission of additional evidence in the reconsideration process. The Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely and exercised its discretion in denying her request for a review of the written record as she had other review options available.

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury on July 31, 2009. The Board further finds that appellant did not timely request a review of the written record. The case is returned to the Office for adjudication of appellant's reimbursement of medical expenses related to her treatment on July 31, 2009.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2009 decision of the Branch of Hearings and Review is affirmed. The September 24, 2009 decision of Office of Workers' Compensation Programs is affirmed in part and set aside and remanded for further development consistent with this decision of the Board.

Issued: June 2, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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