United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 10-1799**
	)	**Issued: March 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Carteret, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 30, 2010 appellant filed a timely appeal from the February 17, 2010 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim and the May 24, 2010 nonmerit decision denying 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.[1]

ISSUES

The issues are: (1) whether appellant sustained injuries to her head, arm or face while in the performance of duty on June 5, 2009; and (2) whether the Office properly refused to reopen the case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] The Board notes that appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On June 12, 2009 appellant, a 29-year-old mail handler, filed a traumatic injury claim alleging that she injured her face, arm and the right side of her head when she fell off of a tow motor at work on June 5, 2009.

Appellant submitted a letter dated June 11, 2009 from Dr. Vinod Kapoor, a neurologist, who stated that appellant was under his care "because of an episode of dizziness and passing out while driving a tow motor at work. Dr. Kapoor noted that she was undergoing tests and would be unable to return to work until July 8, 2009.

In a June 6, 2009 statement, Carolyn Counts, a coworker, reported that on June 5, 2009 she saw appellant fall from a tow motor and "hit the floor hard." She ran to appellant and observed that she was having a seizure. Terique Davis stated that at 12:50 p.m. on the date in question, he saw appellant shaking on her tow motor "which led to her fallin[g] head first and hittin[g] her head on the ground.

On June 12, 2009 the employing establishment controverted the claim on the grounds that the evidence failed to establish that appellant's alleged condition was causally related to her employment.

In a letter dated June 16, 2009, the Office informed appellant that the information submitted was insufficient to establish her claim and allowed her 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In a statement dated June 16, 2009, appellant indicated that, on the date in question, she started to feel dizzy while driving the tow motor because of the new safety light that turned around and around. She fell from the tow motor and hit her head on the floor. Appellant did not remember the fall, but believed that she must have fallen on her right side because she was not able to move her right arm and she had bruises on her right leg and ankle. She stated that she had no history of fainting spells or any other condition that would cause her to fall.

By decision dated July 20, 2009, the Office denied appellant's claim. Although it accepted that the work event occurred as alleged, the Office found that the medical evidence did not contain a diagnosis that could be connected to the accepted event or an explanation as to whether the fall was due to a preexisting condition or unknown cause. The evidence, therefore, was insufficient to establish that appellant had sustained an injury under the Federal Employees' Compensation Act on June 5, 2009.

On August 17, 2009 appellant requested an oral hearing.

In a December 18, 2009 letter, Dr. Kapoor reported that on June 8, 2009 appellant informed him that, while driving a tow motor at work, she became dizzy from its flashing light, fell off the tow motor and struck her head on the floor. Appellant stated that the fall caused her to have a seizure. The record contains copies of x-rays of her right shoulder.

At a December 23, 2009 hearing, appellant testified that on June 5, 2009 she became dizzy after watching the blinking strobe light on the tow motor for several hours. She fell from the tow motor, hitting her head on the floor and experiencing a seizure.

In a February 17, 2010 decision, an Office hearing representative affirmed the July 20, 2009 decision, finding that the medical evidence was insufficient to establish the fact of injury.

On March 15, 2010 appellant requested reconsideration.

Appellant submitted a February 24, 2010 letter from Dr. Kapoor reflecting that he was treating appellant for seizure disorder. Dr. Kapoor related her statement that she had a seizure at work on June 3, 2009, which was caused or triggered by the light on the tow motor.

By decision dated May 24, 2010, the Office denied appellant's request for reconsideration on the grounds that the evidence presented was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, 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.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

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[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury," as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

> 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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

It is a well-settled principle of workers' compensation law, and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface, and there is no intervention or contribution by any hazard or special condition of employment -- is not within coverage of the Act.[11] Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, as the Board has made equally clear, the fact that the cause of a particular fall cannot be ascertained or that the reason it occurred cannot be explained, does not establish that it was due to an idiopathic condition.

This follows from the general rule that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to such general rule.[12] If the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition preexisted and caused the fall.[13]

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[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Carol A. Lyles*, 57 ECAB 265 (2005).

[12] *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

[13] *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the June 5, 2009 workplace incident occurred as alleged.[14]

The issue, therefore, is whether appellant has submitted sufficient medical evidence establishing that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted by appellant consisted of letters from Dr. Kapoor dated June 11 and December 18, 2009 and copies of right shoulder x-rays. On June 11, 2009 Dr. Kapoor stated that appellant was under his care "because of an episode of dizziness and passing out while driving a tow motor at work." He noted that she was undergoing tests and would be unable to return to work until July 8, 2009. His report did not contain a definitive diagnosis or examination findings; nor did it provide an opinion as to the cause of appellant's condition. Therefore, his report is of limited probative value.[15]

On December 18, 2009 Dr. Kapoor reported that on June 8, 2009 appellant informed him that, while driving a tow motor at work, she became dizzy from its flashing light, fell off the tow motor and struck her head on the floor. She stated that the fall caused her to have a seizure. This report does not contain a diagnosis, examination findings or an opinion from Dr. Kapoor on the cause of appellant's condition, but rather merely repeats appellant's allegations. Therefore, it is of diminished probative value. The remaining medical evidence of record, which does not contain an opinion on causal relationship, is of limited probative value and insufficient to establish appellant's claim.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how her claimed condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

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[14] As noted above, an injury resulting from an idiopathic fall is not compensable. *Carol A. Lyles, supra* note 11. In this case, however, the factual and medical evidence of record is insufficient to establish that appellant's fall was idiopathic. In fact, the record does not contain any medical opinion evidence as to the cause of appellant's fall. Therefore, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition preexisted the fall and caused the fall. *Steven S. Saleh*, 55 ECAB 724 (2002); *Judy Bryant*, *supra* note 13; *Martha G. List*, *supra* note 13. The Board, thus, finds that the episode remains an unexplained fall while appellant was engaged in activities related to her employment duties.

[15] Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Michael E. Smith*, 50 ECAB 313 (1999).

On appeal, appellant contends that she was injured on the job. She asserts that she was first treated by Dr. Kapoor on June 8, 2008. The Board finds that the incident did occur in the performance of duty but that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury on June 5, 2009 as a result of the incident.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[16] the Office 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.[17] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[18] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[19] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[20]

ANALYSIS -- ISSUE 2

Appellant's March 15, 2010 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is 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).

In support of her request for reconsideration, appellant submitted a February 24, 2010 letter from Dr. Kapoor reflecting that he was treating appellant for seizure disorder and relating her statement that she had a seizure at work on June 3, 2009, which was caused or triggered by the light on the tow motor. Dr. Kapoor's letter does not provide a definitive diagnosis, examination findings or a rationalized opinion as to the cause of appellant's condition. It merely reiterates information contained in documents previously received and reviewed by the Office and is, therefore cumulative and duplicative in nature.[21] The Board finds that his February 24, 2010 report does not constitute relevant and pertinent new evidence not previously considered by

[16] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[17] 20 C.F.R. § 10.606(b)(2).

[18] *Id*. at § 10.607(a).

[19] *Id*. at § 10.608(b).

[20] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[21] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor,* 51 ECAB 482 (2000).

the Office.[22] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a further review of the merits pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 15, 2010 request for reconsideration.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 5, 2009. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 24 and February 17, 2010 are affirmed.

Issued: March 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[22] *See Susan A. Filkins*, 57 ECAB 630 (2006).