United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 10-1991**
	)	**Issued: March 15, 2011**
DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD AUXILIARY, Philadelphia, PA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 29, 2010 appellant timely appealed the July 2, 2010 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. He also timely appealed the Office's May 24, 2010 merit decision, which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] Appellant submitted additional evidence with his July 29, 2010 appeal. The Board's review of a case is limited to the evidence in the record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1) (2010). Consequently, the Board is precluded from reviewing any evidence submitted after the July 2, 2010 decision.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on April 11, 2010; and (2) whether the Office properly denied his June 6, 2010 request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, an 83-year-old Coast Guard auxiliary member,[3] filed a traumatic injury claim (Form CA-1) alleging that he sustained a concussion on April 11, 2010. At the time of the alleged injury, he was teaching a boating safety class on behalf of the employing establishment. Appellant reportedly tripped over an electric cord, stumbled then hit his head on a door and fell backwards to the floor, striking his head as he landed. He did not submit any medical evidence with his April 14, 2010 claim. The Office later advised appellant that he needed to submit a physician's opinion that included a specific diagnosis and an explanation of how the injury occurred.

Appellant subsequently submitted emergency department aftercare instructions dated April 11, 2010. He was treated for an unspecified "head injury" and "sinusitis." The document was signed by Christine Howell, a physician's assistant. A "Dr. Ryave" was identified as the case supervisor.

In a decision dated May 24, 2010, the Office denied appellant's claim. While the record supported that the claimed event occurred as alleged, the medical evidence did not provide a diagnosis that could be connected to the April 11, 2010 employment incident. The Office noted that the emergency department aftercare instructions did not include a history of injury or a diagnosis.

On June 6, 2010 appellant requested reconsideration. He submitted the appeal request form that accompanied the Office's May 24, 2010 decision. Appellant did not submit any evidence with his request for reconsideration.

By decision dated July 2, 2010, the Office denied appellant's June 6, 2010 request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including

[3] By letter dated April 19, 2010, the Office claims examiner advised that members of the auxiliary volunteers who incur physical injury, contract sickness or disease or die while performing any specific duty to which they have been assigned by competent Coast Guard authority shall be entitled to coverage under the Act. The Board held in *Rivieene Levin and Jami Smilgoff, as Administrators of the Estate of Richard E. and Linda B. Smilgoff*, 45 ECAB 391 (1994).

that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if 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 is whether the employee actually experienced the employment incident that is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury.[6]

ANALYSIS -- ISSUE 1

The record indicates that appellant received medical treatment for an unspecified "head injury" on April 11, 2010; the same day he tripped over an electric cord, fell backwards and struck his head. However, the emergency department aftercare instructions did not include a specific medical diagnosis, such as concussion, nor did it identify a specific mechanism of injury. In order to satisfy his burden of proof on "fact of injury," appellant must submit competent medical evidence demonstrating that the employment incident caused a personal injury.[7] Because the April 11, 2010 aftercare instructions do not include a specific injury-related diagnosis, he has failed to establish the second component of "fact of injury." At the time the Office issued its May 24, 2010 merit decision, there was no other medical evidence of record. Accordingly, the Office properly denied appellant's traumatic injury claim.

LEGAL PRECEDENT -- ISSUE 2

The Office has the discretion to reopen a case for review on the merits.[8] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[9] 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.[10]

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[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

[7] *John J. Carlone*, *supra* note 6.

[8] 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606(b)(2).

[10] *Id.* at § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant's June 6, 2010 request for reconsideration consisted of the appeal request form attached to the Office's May 24, 2010 decision. He simply placed a checkmark indicating his intent to pursue reconsideration. Appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[11] The Board further notes that he did not submit any evidence with his June 6, 2010 request for reconsideration. The Office denied appellant's claim because the record was devoid of any medical evidence diagnosing a condition causally related to the April 11, 2010 employment incident. Appellant did not submit any "relevant and pertinent new evidence" with his June 6, 2010 request for reconsideration, therefore, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).[12]

Because appellant's application for reconsideration did not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office properly denied the June 6, 2010 request for reconsideration without reopening the case for a review on the merits.

CONCLUSION

Appellant did not establish that he sustained an injury in the performance of duty on April 11, 2010. The Board further finds that the Office properly denied his June 6, 2010 request for reconsideration.

[11] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[12] *Id.* at § 10.606(b)(2)(iii). Appellant has since submitted additional medical evidence, but as previously indicated, *supra* note 2, the Board is precluded from reviewing evidence that was not in the case record when the Office issued its final decision.

ORDER

IT IS HEREBY ORDERED THAT the July 2 and May 24, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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