United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 11-780**
	)	**Issued: January 10, 2012**
SMITHSONIAN INSTITUTION, NATIONAL ZOO, Washington, DC, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2011 appellant filed a timely appeal from a December 3, 2010 merit decision of the Office of Workers' Compensation Programs' (OWCP) denying his traumatic injury claim and a January 7, 2011 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 his burden of proof to establish that he sustained dehydration and heat exhaustion in the performance of duty on July 20, 2010; and (2) whether OWCP properly denied his request for further merit review under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 20, 2010 appellant, then a 56-year-old biological science technician (horticulture), filed a traumatic injury claim alleging that on that day he suffered dehydration in the performance of duty.

Appellant submitted a July 20, 2010 report from the District of Columbia Fire and Emergency Medical Service Department prepared by Yvette C. Reid, an emergency medical technician (EMT), who reported that he received treatment for dehydration and was transported to Sibley Memorial Hospital for further treatment.

In an October 25, 2010 letter, OWCP informed appellant that the evidence of record was insufficient to support his claim and advised as to the type of medical and factual evidence to submit.

In response to OWCP's request for additional information appellant submitted July 20, 2010 discharge instructions from Sibley Memorial Hospital which noted a diagnosis of dizziness and heat exhaustion and that treatment had been provided by Dr. Lemi Luu, a Board-certified emergency medicine physician. Appellant was released to return to work the following day.

By decision dated December 3, 2010, OWCP denied appellant's claim on the grounds that the there was no medical evidence containing a diagnosis due to the identified work factors.

On December 30, 2010 appellant requested reconsideration.

On January 10, 2011 OWCP received a July 20, 2010 Sibley Hospital Admission Report from Dr. Luu and Margaret Roca, R.N., who reported appellant felt dizzy while working outside at the employing establishment. A physical examination and diagnostic testing were performed. Dr. Luu diagnosed dizziness and heat exhaustion.

By decision dated January 7, 2011, OWCP denied reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

[2] *Id.*

[3] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

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.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease nor 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.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[12]

ANALYSIS -- ISSUE 1

OWCP accepted that the July 20, 2010 incident occurred as alleged. It denied appellant's claim on the grounds that there was insufficient medical evidence to support that a specific medical condition was diagnosed in relation to the July 20, 2010 employment incident. The Board finds that appellant did not submit sufficient medical evidence to support that he sustained injury due to dehydration causally related to the July 20, 2010 employment incident.

[5] *Bonnie A. Contreras*, *supra* note 3; *B.F.*, Docket No. 09-60 (issued March 17, 2009).

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[7] *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3; *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[8] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

[10] *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

[11] *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

On October 25, 2010 OWCP advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a narrative medical report from an attending physician addressing how the accepted employment incident caused or aggravated his claimed condition.

In support of his claim appellant submitted a July 20, 2010 report prepared by Ms. Reid, an EMT, reporting treatment for dehydration and that he had been transported to Sibley Memorial Hospital. An EMT is not a physician under FECA and, consequently, the report from her cannot be considered as medical opinion evidence.[13] Thus, this report is insufficient to support appellant's claim.

Appellant also submitted discharge instructions from Sibley Memorial Hospital which referenced Dr. Luu and noted diagnoses of dizziness and heat exhaustion. However, this report offers no opinion which addresses how the July 20, 2010 accepted incident caused his diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] Thus, this report from Sibley Memorial Hospital is insufficient to establish appellant's claim. The record contains no other medical evidence received prior to the issuance of OWCP's December 3, 2010 decision. Because appellant has not submitted a reasoned medical opinion explaining how and why his dizziness and heat exhaustion are employment related, he has not met his burden of proof.

As appellant has not submitted any rationalized medical evidence to support his claim that he sustained an injury causally related to the July 20, 2010 employment incident, he has failed to meet his burden of proof to establish a claim. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[15] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[16] Causal relationships must be established by rationalized medical opinion evidence.[17] Appellant failed to submit such evidence and OWCP properly denied his claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[13] *See* 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law); *Roy L. Humphrey*, 57 ECAB 238 (2005). *See also Thomas L. Agee*, 56 ECAB 465 (2005) (where the Board held that a medical opinion cannot be considered probative medical evidence unless it can be established that the person completing the report is a "physician" as defined in 5 U.S.C. § 8101(2)).

[14] *See K.W.*, 59 ECAB 271 (2007); *Michael E. Smith*, 50 ECAB 313 (1999).

[15] *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *D.E.*, 58 ECAB 448 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[16] *D.D.*, 57 ECAB 734 (2006).

[17] *Roy L. Humphrey*, *supra* note 13; *T.P.*, Docket No. 09-2102 (issued August 25, 2010).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[18] OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.[19] To be entitled to a merit review of an OWCP 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.[20] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[21]

ANALYSIS -- ISSUE 2

On reconsideration appellant submitted a July 20, 2010 emergency room report from Sibley Hospital, which was received by OWCP on January 7, 2011, the same day it issued its decision denying reconsideration. There is no evidence that OWCP considered the July 20, 2010 emergency room report when it issued its January 7, 2011 nonmerit decision. In fact, it stated that no medical evidence had been submitted with appellant's request or received at the time of decision. The Board finds that medical evidence relating to his claim was received but not reviewed by OWCP prior to its denial of his request for reconsideration. As noted, the Board's decisions are final as to the subject matter appealed and it is crucial that OWCP review all newly received evidence relevant to that subject matter prior to the time of issuance of its final decision. Therefore, in accordance with Board precedent,[22] the case will be remanded for a proper review of the evidence and an appropriate final decision on appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty. While the evidence is sufficient to establish that the July 20, 2010 incident occurred as alleged, there is no report from a physician who has provided a well-reasoned explanation of how this incident caused or contributed to an injury.

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[18] 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

[19] 20 C.F.R. § 10.606(b)(2). *See Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

[20] *Id*. at § 10.607(a). *See Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

[21] 20 C.F.R. § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

[22] 20 C.F.R. § 501.6(c). *See Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch*, *see infra*, where OWCP did not consider a medical report received on the date of its decision); *see also William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence received four days prior to the date of its decision); *L.C.*, Docket No. 08-1923 (issued May 13, 2009) (OWCP must review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision).

Further, the Board finds that the case is not in posture for a decision regarding OWCP's denial of appellant's reconsideration request and that the case must be remanded for further review of the evidence and issuance of an appropriate final decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2011 is set aside and the case remanded for further action consistent with this decision. The December 3, 2010 OWCP decision is affirmed.

Issued: January 10, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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