

On appeal, appellant argues that he was not able to get an appointment with his physician until after the initial claim was denied. He also contended that he was away from home for over four weeks when the questionnaire was sent to his residence.

FACTUAL HISTORY

On April 15, 2013 appellant, then a 39-year-old federal agent/nuclear material courier, filed a claim for a traumatic injury alleging that on April 10, 2013 he injured his low back riding in an SRV-5 during tactical training. He submitted no evidence with his claim.

By letter dated April 24, 2013, OWCP informed appellant that he had submitted insufficient evidence to support his claim. It requested that he submit evidence, including a response to questions with regard to the employment incident and medical evidence establishing that he sustained a diagnosed medical condition causally related to the alleged employment incident. Appellant was given 30 days to submit the necessary evidence. He did not submit a timely response to this letter.

By decision dated June 4, 2013, OWCP denied appellant's claim. It determined that the evidence was not sufficient to establish that he experienced the April 10, 2013 incident as alleged. Further, there was no firm medical diagnosis of any condition resulting from the injury. Appellant did not submit a physician's opinion as to how the alleged incident resulted in a diagnosed condition.

On June 19, 2013 appellant requested reconsideration. He did not submit any evidence with his reconsideration request.

By decision dated June 25, 2013, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 or exposure, which is alleged to have occurred.³

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on April 10, 2013. The Board notes that he did not submit any medical or factual evidence in support of his claim. Appellant did not submit a sufficiently detailed description of the employment incident or a response to the questions sent to him by OWCP. Furthermore, he did not submit any medical evidence in support of his claim. By letter dated April 24, 2013, OWCP informed appellant of the deficiencies of his claim and the need to submit additional information regarding the alleged incident and medical evidence in support of his claim. Appellant did not submit a timely response. As he failed to establish that he sustained an employment incident and as he failed to submit medical evidence that established a medical condition causally related to the employment incident, OWCP properly denied his claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.⁶

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by OWCP.⁸ When a claimant fails to meet one

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁶ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁷ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he 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).

⁸ 20 C.F.R. § 10.606(b)(3).

of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by OWCP. Furthermore, he failed to submit any pertinent new and relevant evidence before OWCP that supported his request for reconsideration. The Board, therefore, finds that OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The Board notes that appellant submitted evidence after the issuance of the June 25, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁰ 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.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on April 10, 2013. The Board further finds that OWCP properly denied his request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *See id.* at § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 25 and 4, 2013 are affirmed.

Issued: February 11, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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