

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

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R.P., Appellant)	
)	
and)	Docket No. 14-413
)	Issued: July 8, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Columbus, OH, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 10, 2013¹ appellant filed a timely appeal from a June 13, 2013 merit decision and two nonmerit decisions dated September 9 and November 13, 2013 of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from June 13, 2013, the date of OWCP's decision, was December 10, 2013. Since using December 17, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 10, 2013, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the issuance of the November 13, 2013 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that his bilateral kidney condition was causally related to a July 18, 2012 employment incident, as alleged; and (2) whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a) in its September 9 and November 13, 2013 decisions.

On appeal, appellant contends that he was in the performance of duty as a letter carrier on July 18, 2012 and the unusually high temperature of 104 degrees that day is causally related to his injury.

FACTUAL HISTORY

On August 7, 2012 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an acute renal failure of the kidneys on July 17, 2012 as a result of inclement weather conditions which caused him to pass out at the wheel while he was in the performance of duty.

In a July 18, 2012 report, Dr. Maisha Mosley, an emergency room attending physician, diagnosed rhabdomyolysis, hypotension and syncope. She indicated that appellant had a history of hypertension and rhabdomyolysis and presented to the emergency department for syncope. Dr. Mosley stated that appellant was driving a postal truck during his work shift and was making a turn when his vision got bright and he wrecked the truck, hitting a curb and sign. Appellant reported that he had fainted. Although he was able to drive back to the station, he fell to his knees when he exited the truck, but denied syncope. Appellant's airbag did not deploy. He had nausea but had not vomited. Appellant was told that his condition could be secondary to delivering mail in the heat as his cramps had been more often with the past hot summer days. He reported syncope while in the military when he was younger.

In an August 13, 2012 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted July 18, 2012 hospital records from Mount Carmel East Hospital and a July 30, 2012 narrative statement reiterating that he passed out at the wheel in the performance of duty on July 18, 2012. He stated that the only thing he remembered was somehow being back at the station parking lot. Appellant felt headaches, confusion, nausea, and was totally unaware of his surroundings.

In a July 26, 2012 report, Dr. Patricia Hollingsworth, a Board-certified family practitioner, indicated that appellant had been under her care for the period July 19 to 29, 2012 due to medical conditions involving his kidneys. She opined that he was unable to perform his duties during his period of treatment and was able to return to work on July 30, 2012.

By decision dated September 14, 2012, OWCP denied the claim on the basis that the evidence failed to establish fact of injury.

On October 11, 2012 appellant requested reconsideration and submitted a July 21, 2012 report from Dr. James Soldano, a Board-certified family practitioner, who diagnosed syncope related to dehydration, acute renal insufficiency and rhabdomyolysis. Dr. Soldano indicated that appellant had high blood pressure and was out in the heat with temperatures around 103 to 104 degrees. Appellant had noticed a decreased urine output, dark urine, muscle pains and tried to get his hydration back in control. He got into his truck and had an accident due to a syncopal episode. Dr. Soldano indicated that appellant had a very similar episode in the past in hot weather.

In an undated report, Dr. Fareed Shaikh, a physician Board-certified in cardiovascular disease, internal medicine and interventional cardiology, diagnosed hypertension. He indicated that appellant's blood pressure was within normal limits in the office. Dr. Shaikh opined that appellant's "[s]yncopal episodes were probably related to hypotension related to Diovan" and advised him to remain off of Diovan.

In a September 11, 2012 report, Dr. Hollingsworth indicated that appellant had an echocardiogram and various other noncardiac tests to determine that his symptoms from the July 2012 syncopal episode were related primarily to dehydration and acute renal insufficiency. On November 5, 2012 he diagnosed syncope, renal failure, dehydration and elevated creatine phosphokinase (CPK) and placed work restrictions on appellant, advising that he must not work in extreme heat or humidity and must stay hydrated at all times.

By decision dated January 15, 2013, OWCP found that appellant had established fact of injury, but denied the claim on the basis that the medical evidence submitted was not sufficient to establish a causal relationship between his bilateral kidney condition and the July 18, 2012 employment incident.

On January 15, 2013 appellant requested reconsideration and submitted diagnostic reports dated July 20 and 21, 2012 from Mount Carmel East Hospital and a July 20, 2012 transthoracic echocardiography report.

In a March 4, 2013 report, Dr. Hollingsworth indicated that the employment incident that occurred on July 18, 2012 was due to a syncopal episode due to dehydration, acute renal failure and rhabdomyolysis. She indicated that appellant was treated at Mount Carmel East Hospital for all of these diagnoses. Dr. Hollingsworth opined that "[t]he extremely hot weather (103 [to] 104 [degrees]) was felt to be a significant precipitating/contributing factor in what happened to [appellant] medically."

By decision dated June 13, 2013, OWCP denied modification of its January 15, 2013 decision.

On August 27, 2013 appellant requested reconsideration.

By decision dated September 9, 2013, OWCP denied appellant's request for reconsideration of the merits finding that he had not submitted pertinent new and relevant evidence and had not shown that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

On November 11, 2013 appellant requested reconsideration and resubmitted the March 4, 2013 report from Dr. Hollingsworth.

By decision dated November 13, 2013, OWCP denied appellant's request for reconsideration without a review of the merits.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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 injury⁵ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS -- ISSUE 1

OWCP has accepted that the employment incident of July 18, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant's bilateral kidney condition

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* *See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* *See Gary J. Watling*, 52 ECAB 278 (2001).

resulted from the July 18, 2012 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In her reports, Dr. Hollingsworth diagnosed syncope, renal failure, dehydration and elevated CPK. On September 11, 2012 she indicated that appellant had an echocardiogram and various other noncardiac tests to determine that his symptoms from the July 2012 syncopal episode were related primarily to dehydration and acute renal insufficiency. On March 4, 2013 Dr. Hollingsworth reiterated that the employment incident that occurred on July 18, 2012 was due to a syncopal episode due to dehydration, acute renal failure and rhabdomyolysis. She opined that “[t]he extremely hot weather (103 [to] 104 [degrees]) was felt to be a significant precipitating/contributing factor in what happened to [appellant] medically.” Dr. Hollingsworth failed to provide a rationalized opinion explaining how factors of his employment, such as driving in hot weather, caused or aggravated his bilateral kidney condition. Although she noted that appellant’s condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat his allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁹ Thus, the Board finds that the reports from Dr. Hollingsworth are insufficient to establish that he sustained an employment-related injury.

On July 21, 2012 Dr. Soldano diagnosed syncope related to dehydration, acute renal insufficiency and rhabdomyolysis. He indicated that appellant had high blood pressure and was out in the heat with temperatures around 103 to 104 degrees, noting that appellant had a very similar episode in the past in hot weather. Dr. Soldano did not provide sufficient medical rationale explaining how appellant’s conditions were caused or aggravated by working in hot weather on July 18, 2012. Thus, the Board finds that appellant did not meet his burden of proof to establish a causal relationship between his bilateral kidney conditions and the July 18, 2012 employment incident.

In his report, Dr. Shaikh diagnosed hypertension and opined that appellant’s “[s]yncopal episodes were probably related to hypotension related to Diovan” and advised him to remain off of Diovan. He did not provide medical rationale explaining how appellant’s condition was caused or aggravated by the July 18, 2012 employment incident.

In her July 18, 2012 report, Dr. Mosley diagnosed rhabdomyolysis, hypotension and syncope. 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.¹⁰

The July 20 and 21, 2012 diagnostic reports from Mount Carmel East Hospital and the July 20, 2012 transthoracic echocardiography report are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant’s claim.

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Thus the evidence submitted by appellant is devoid of rationalized medical evidence to support his allegation that he sustained an injury causally related to a July 18, 2012 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, appellant contends that he was in the performance of duty as a letter carrier on July 18, 2012 and the unusually high temperature of 104 degrees that caused his injury. Based on the Board's findings for the reasons stated above, although appellant was in the performance of duty at the time of the incident, the medical evidence did not establish that the condition was caused by work factors.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹¹ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹²

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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.¹³ 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.¹⁴ 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.¹⁵

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁶ and the submission of evidence or

¹¹ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

¹² See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

¹³ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608(b).

¹⁶ See *A.L.*, *supra* note 13. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷

ANALYSIS -- ISSUE 2

In this case, there are two nonmerit decisions before the Board: the September 9, 2013 decision, which reviewed the August 27, 2013 reconsideration request; and the November 13, 2013 decision, which reviewed the November 11, 2013 reconsideration request and the accompanying evidence.

With respect to the August 27, 2013 reconsideration request, appellant did not submit any evidence which shows that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Moreover, he did not submit any pertinent new and relevant evidence. As he did not meet any of the necessary requirements, he is not entitled to further merit review.

In support of his November 11, 2013 reconsideration request, appellant resubmitted a March 4, 2013 report from Dr. Hollingsworth. The Board finds that the submission of this report did not require reopening appellant's case for merit review because appellant had submitted the same report from Dr. Hollingsworth, which was previously reviewed by OWCP in a decision dated June 13, 2013. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Therefore, appellant has not established a basis for reopening his case and the Board finds that OWCP properly denied merit review.¹⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his bilateral kidney condition is causally related to a July 18, 2012 employment incident, as alleged. The Board further finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a) in its September 9 and November 13, 2013 decisions.

¹⁷ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁸ See *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 13, September 9 and June 13, 2013 are affirmed.

Issued: July 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board