

FACTUAL HISTORY

On October 5, 2012 appellant, then a 56-year-old nurse, filed a traumatic injury claim alleging that on August 30, 2012 she experienced a migraine leading to dehydration from vomiting. She attributed her condition to contact with a coworker at 11:30 a.m. on August 30, 2012. On the reverse of the form, her supervisor denied knowledge of the specifics of the incident.

On September 25, 2012 Dr. Tahir Tellioglu, a Board-certified psychiatrist, stated that he began treating appellant on September 4, 2012 for an anxiety disorder which might worsen with job-related stressors. He found that appellant was unable to work until October 26, 2012.

OWCP requested additional factual and medical information from appellant by letter dated October 31, 2012. Appellant submitted a November 6, 2012 report from Elinor M. Collins, a psychiatric clinical nurse specialist, who listed a history that on August 30, 2012 appellant was approached by a coworker and engaged in a verbal encounter resulting in the development of a migraine with nausea and vomiting for three days and dehydration. Appellant was hospitalized for three days beginning September 5, 2012.

By decision dated December 10, 2012, OWCP denied appellant's claim. It found that she failed to submit sufficient factual evidence to establish an incident on August 30, 2012, as alleged. Further appellant did not submit medical evidence to establish that her employment caused or contributed to her physical condition.

On a form dated January 8, 2013, appellant requested an oral hearing before an OWCP hearing representative. It was postmarked January 10, 2013. By decision dated February 26, 2014, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely. It found that her case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

OWCP defines 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.”⁵ 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. 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 a medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS -- ISSUE 1

Appellant filed a traumatic injury claim on October 5, 2012 alleging that on August 30, 2012 she came in contact with a coworker. She alleged a migraine based on dehydration from vomiting. Appellant’s supervisor denied any knowledge of the alleged employment incident. Ms. Collins stated that on August 30, 2012 appellant was approached by a coworker and engaged in a verbal encounter resulting in the development of a migraine.

Appellant has not submitted an adequate factual description of the employment incident. She has not submitted sufficient evidence for the Board to determine whether an employment incident occurred on August 30, 2012 at 11:30 a.m. as alleged. Appellant did not provide sufficient explanation of what took place on August 30, 2012 or her interaction with a coworker caused her migraine. While Ms. Collins mentioned a verbal encounter, this limited description is not sufficient to establish that appellant sustained a compensable employment incident. Appellant has failed to establish a traumatic injury.

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 8124(b)(1) of FECA provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁸ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period. In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁹

ANALYSIS -- ISSUE 2

OWCP issued its final decision on December 10, 2012. Appellant requested an oral hearing on a form dated January 8, 2013 and postmarked January 10, 2013. As the hearing request was not postmarked within 30 days, or by January 9, 2013, it was not timely. Appellant is not entitled to an oral hearing as a matter of right.

OWCP proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing. It determined that a hearing was not necessary as the issue in the case could be resolved through the submission of evidence with a request for reconsideration. OWCP properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny her request for a hearing as she had other review options available.

CONCLUSION

The Board finds that appellant has not submitted the necessary factual and medical evidence to establish that she sustained a traumatic injury on August 30, 2012. The Board further finds that OWCP's Branch of Hearings and Review properly denied her request for an oral hearing.

⁸ 20 C.F.R. § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

⁹ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2013 and December 10, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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