United States Department of Labor
Employees' Compensation Appeals Board

A.A., Appellant	)	
and	)	**Docket No. 18-0031**
	)	**Issued: April 5, 2018**
U.S. POSTAL SERVICE, MANAGER LITTLE ROCK INDUSTRIAL STATION Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2017 appellant filed a timely appeal from a September 12, 2017 merit decision and a September 29, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish heat exhaustion causally related to the accepted July 7, 2017 employment incident; and (2) whether

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of OWCP's September 29, 2017 decision, appellant submitted new evidence. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time it issued its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

On appeal appellant contends that the medical evidence submitted establishes that he sustained work-related heat exhaustion on July 7, 2017.

FACTUAL HISTORY

On July 10, 2017 appellant, then a 33-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2017 he developed a respiratory condition when he became overheated on his route while at work. He claimed that he took breaks, but he still felt like passing out. Appellant stopped work on the date of injury.

In a July 7, 2017 narrative statement, appellant further described the events of July 7, 2017. He finished his route and as he headed back to the employing establishment he felt as if he was passing out. Appellant had trouble breathing and had muscle weakness. He began to cough repeatedly. When appellant arrived at the office he informed his supervisor that he was not feeling well. She told him to take a seat and put a cold wet towel on his neck because he was sweating heavily. Appellant's supervisor called for an ambulance.

In a July 10, 2017 letter, Dr. Ronald J. Wiewora, an attending Board-certified internist, noted that appellant was seen on that date. He recommended that appellant return to work on that day with a restriction of staying out of the heat.

OWCP, by development letter dated July 27, 2017, noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work. It had approved a limited amount of medical expenses without considering the merits of his claim. OWCP reopened appellant's claim because he had not yet returned to full-time work. It requested that he provide additional factual and medical evidence in support of his traumatic injury claim and afforded him 30 days to respond.

In a July 17, 2017 duty status report (Form CA-17), Dr. Wiewora noted a history of heat exhaustion on July 7, 2017. He provided a clinical finding of dehydration and diagnosed heat exhaustion due to injury. Dr. Wiewora advised that appellant could resume work as of the date of examination with the restriction of working in a temperature of 85 degrees or less.

In an August 1, 2017 attending physician's report (Form CA-20), Elaine Mitchell, an advanced practical registered nurse, diagnosed heat exhaustion and advised that the diagnosed condition was caused by the claimed July 7, 2017 incident. She noted that on July 17, 2017 appellant was advised that he could resume light work in a temperature of 85 degrees or less.

By letters dated August 8 and 14, 2017, the employing establishment controverted appellant's claim noting that he failed to establish fact of injury and that the claimed medical condition was causally related to his employment. It also noted that, under a prior claim, assigned OWCP File No. xxxxxx191, OWCP had accepted that on April 9, 2015 he sustained heat exhaustion.

By decision dated September 12, 2017, OWCP denied appellant's traumatic injury claim as the medical evidence of record failed to establish that his diagnosed condition was causally related to the accepted July 7, 2017 employment incident. It noted his allegation that he felt like he was going to pass out and he experienced trouble breathing and muscle weakness while walking back to the employing establishment after finishing his route.

On September 26, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a progress note dated July 17, 2017, Dr. Wiewora noted a history of the accepted July 7, 2017 employment incident and appellant's medical history. He also noted that appellant requested a note to restrict him from outdoor work in temperatures above 85 degrees as appellant had required similar restrictions in previous summers. Dr. Wiewora provided a review of appellant's symptoms and discussed examination findings. He assessed heat exhaustion, gout, hypertension, gastroesophageal reflux disease, and abdominal pain.

An unsigned progress note dated July 31, 2017 from Central Arkansas Veterans Healthcare System related a history of appellant's medical conditions and treatment, which included the treatment of his heat exhaustion on July 7, 2017 by Dr. Wiewora. The progress note also related a history that appellant felt light-headed while delivering mail to its building on the day of examination. He reported continued intermittent right-sided upper abdominal pain, but no light-headedness. Appellant also reported a past evaluation related to a suspicion of gastritis. Examination findings and his active outpatient medications were described.

In an August 10, 2017 progress note, Dr. Solomon C. Mogbo, a Board-certified internist, related a history of the accepted July 7, 2017 employment incident and appellant's medical, social, and family background. He discussed findings on physical examination and provided an impression of heat exhaustion, headache, essential (primary) hypertension, fatigue, and electrolyte imbalance.

By decision dated September 29, 2017, OWCP denied further merit review of appellant's claim. It found that his request for reconsideration neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[5] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.[6]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified incidents.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish heat exhaustion caused or aggravated by the accepted July 7, 2017 employment incident.

Appellant submitted reports dated July 10 and 17, 2017 from his attending physician, Dr. Wiewora. In the July 17, 2017 Form CA-17 report, Dr. Wiewora examined appellant and diagnosed heat exhaustion due to the accepted employment incident. He advised that appellant could resume work as of the date of examination with the restriction of working in temperatures of 85 degrees or less. Dr. Wiewora's report is not well rationalized. While it contains an affirmative opinion that appellant's diagnosed heat exhaustion was related to the performance of his employment duties on July 17, 2017, the report does not contain sufficient medical rationale explaining his opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[10] Dr. Wiewora did not explain how appellant's heat exhaustion and disability for work were caused or aggravated by his work on July 7, 2017. In his July 10, 2017 report, he addressed appellant's work capacity and restriction,

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[10] *See George Randolph Taylor,* 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

but failed to provide a firm diagnosis of a particular medical condition,[11] note a history of injury,[12] or offer a specific opinion as to whether the accepted employment incident caused or aggravated appellant's condition.[13] For the stated reasons, the Board finds that Dr. Wiewora's reports are insufficient to establish appellant's burden of proof.

Appellant also submitted an August 1, 2017 Form CA-20 report from a registered nurse. However, this evidence is of no probative medical value as a registered nurse is not considered a physician as defined under FECA.[14]

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish heat exhaustion causally related to his employment on July 7, 2017. Appellant therefore did not meet his burden of proof.

On appeal appellant contends that the medical evidence submitted establishes that he sustained work-related heat exhaustion on July 7, 2017. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[15] Appellant's honest belief that he developed heat exhaustion from his work duties on July 7, 2017, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.[16] As he has failed to provide a rationalized medical opinion sufficient to establish causal relationship between his claimed condition and his employment, he has failed to meet his burden of proof.

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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application

[11] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which 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] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See A.M.*, Docket No. 16-1552 (issued July 5, 2017); *L.C.*, Docket No. 16-1717 (issued March 2, 2017).

[15] *See S.H.*, Docket No. 17-1447 (issued January 11, 2018).

[16] *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

by a claimant.[17] Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).[18] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[19] Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[20]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. section 8128(a).

Appellant disagreed with OWCP's denial of his traumatic injury claim for heat exhaustion causally related to the accepted July 7, 2017 employment incident. On September 26, 2017 he requested reconsideration.

The Board finds that, in his September 26, 2017 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, 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)(3).

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. The underlying issue in this case is whether appellant submitted sufficient medical evidence establishing heat exhaustion causally related to the accepted July 7, 2017 employment incident. He submitted a new progress note dated July 17, 2017 from Dr. Wiewora which related his history of injury and diagnosed, among other things, heat exhaustion. This evidence, however, essentially reiterated Dr. Wiewora's diagnosis of heat exhaustion set forth in his prior report of record. In addition, this evidence failed to address the causal relationship between the diagnosed conditions and appellant's work on July 7, 2017. Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[21] Moreover, the submission

[17] 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.608(a).

[19] *Id.* at § 10.606(b)(3).

[20] *Id.* at § 10.608(b).

[21] *James W. Scott*, 55 ECAB 606 (2004).

of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the clam.[22]

Similarly, Dr. Mogbo's new progress note dated August 10, 2017 is irrelevant to the critical issue of causal relationship. He related a history of the accepted July 7, 2017 employment incident and diagnosed heat exhaustion, but failed to offer an opinion addressing whether the diagnosed condition was caused or aggravated by his employment.[23]

In addition, the July 31, 2017 unsigned progress note from Central Arkansas Veterans Healthcare System is irrelevant to the issue in this claim. This evidence is devoid of a diagnosis and an opinion on the causal relationship between the diagnosed condition and the accepted July 7, 2017 employment incident.[24]

The Board finds, therefore, that the progress notes from Drs. Wiewora and Mogbo and Central Arkansas Veterans Healthcare System are insufficient to warrant further merit review of the claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3) in his September 26, 2017 request for reconsideration. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish heat exhaustion causally related to the accepted July 7, 2017 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

[22] *D'Wayne Avila*, 57 ECAB 642 (2006).

[23] *Id.*

[24] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 29 and 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board