United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 23-0847**
	)	**Issued: October 17, 2023**
DEPARTMENT OF THE INTERIOR, INDIANA DUNES NATIONAL PARK, Porter, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 4, 2023 appellant filed a timely appeal from a February 6, 2023 merit decision and a June 1, 2023 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 a diagnosed medical condition in connection with the accepted December 3, 2022 employment incident; and

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the June 1, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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

FACTUAL HISTORY

On December 22, 2022 appellant, then a 31-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2022 he sustained injury to his lungs and airways when he was exposed to smoke while in the performance of duty. He indicated that in the process of executing a search warrant, he had to run into a burning residential home twice in order to rescue multiple cats and dogs and inhaled a "great deal" of smoke as a result. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a development letter dated January 4, 2023, OWCP advised appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence necessary to establish the claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated February 6, 2023, OWCP found that the December 3, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 27, 2023 appellant requested reconsideration. OWCP received a medical bill dated March 30, 2023 from a medical provider in the amount of $2,089.00.

By decision dated June 1, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA, that an injury 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.[4] 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.[5]

[3] *Supra* note 1.

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incident is sufficient to establish causal relationship.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 3, 2022 employment incident.

Appellant has not submitted any medical evidence in support of his claim. As noted above, an employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim.[11] It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis causally related to the accepted employment incident.[12]

As the evidence of record does not include a medical report, from a physician, relating a medical diagnosis in connection with the accepted December 3, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

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[6] *K.M.*, Docket No. 23-0451 (issued September 25, 2023); *H.M.,* Docket No. 22-0343 (issued June 28, 2022); *T.J.,* Docket No. 19-0461 (issued August 11, 2020); *M.H.,* Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone,* 41 ECAB 354 (1989).

[7] *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

[10] *T.M.,* Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[11] *Supra* note 4.

[12] *J.P.,* Docket No. 20-0381 (issued July 28, 2020); *R.L.,* Docket No. 20-0284 (issued June 30, 2020).

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 by a claimant.[13]

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).[14] This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that: (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.[15] 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 request for reconsideration without reopening the case for a review on the merits.[16]

ANALYSIS -- ISSUE 2

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

Appellant did not offer any argument in support of his request for reconsideration. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case was whether he has met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 3, 2022 employment incident. On reconsideration OWCP only received a medical bill from a medical provider. This bill did not provide a medical diagnosis or an opinion regarding

[13] 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.608(a).

[15] *Id.* at § 10.606(b)(3); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019).

[16] *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

causal relationship. On reconsideration, appellant therefore did not submit relevant and pertinent new evidence regarding the underlying issues.[17]

Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 a diagnosed medical condition in connection with the accepted December 3, 2022 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 6 and June 1, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 17, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[17] *See S.L.*, Docket No. 21-0201 (issued June 10, 2022); *P.C.*, Docket No. 18-1703 (issued March 22, 2019).