United States Department of Labor
Employees' Compensation Appeals Board

ROBERT L. WENTZ, Appellant	)	
and	)	**Docket No. 04-1421**
	)	**Issued: October 22, 2004**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Charlotte, NC, Employer	)	

Appearances:
Robert L. Wentz, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 7, 2004, denying his request for reconsideration and a December 15, 2003 decision, denying his claim for a traumatic injury on April 3, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established an injury in the performance of duty on April 3, 2003; and (2) whether the Office properly denied appellant's request for reconsideration without merit review of the claim.

FACTUAL HISTORY

On May 27, 2003 appellant, then a 74-year-old letter box mechanic, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1), alleging that he sustained an injury in the performance of duty on April 3, 2003. He stated that he was overcome by fumes

from materials in a relay box. A statement from a coworker indicated that an empty gas can and a can of floor sealant were found inside the box.

By letter dated October 24, 2003, the Office requested that appellant submit evidence with respect to any medical treatment he had received. He submitted hospital emergency room reports indicating that he received treatment on April 3, 2003. A hospital form report diagnosed "near-syncope" and indicated that appellant was sent home in stable condition. Diagnostic tests performed at the hospital included an electrocardiogram (EKG), a computerized tomography (CT) scan of the head and a chest x-ray. The results of the diagnostic tests were reported as normal.

In a decision dated December 15, 2003, the Office denied appellant's claim for a traumatic injury. The Office indicated that it accepted that an incident had occurred as alleged, but found that the medical evidence was insufficient to establish an injury causally related to the employment incident.

By letter dated March 24, 2004, appellant requested reconsideration. He stated that he became weak and dizzy while trying to open the sealed relay box. Appellant reported that his supervisor, after observing his condition, insisted that appellant be taken to the hospital emergency room even though he stated that he did not want to be sent to the hospital. He stated that he should not be responsible for the costs of the emergency room treatment as his supervisor had insisted on transporting him to the hospital. With respect to medical evidence, appellant resubmitted the CT and x-ray reports. He also resubmitted the witness statement regarding the April 3, 2003 incident.

In a decision dated April 7, 2004, the Office denied the request for reconsideration without reviewing the merits of the claim. The Office found that the evidence was duplicative and the request for reconsideration was not sufficient to warrant reopening the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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 which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

medical evidence.[3] The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.[4]

ANALYSIS -- ISSUE 1

In the present case, the Office accepted that an incident occurred on April 3, 2003 during which appellant was exposed to fumes from gasoline and floor sealant cans. He did receive treatment on April 3, 2003 at a hospital emergency room, but none of the reports provide a description of the employment incident or an opinion on causal relationship between a diagnosed condition and the employment incident. While the Office has recognized that in certain "clear-cut" traumatic injuries, such as a fall from a scaffold with a broken arm, may not require a medical opinion on causal relationship, this is not the situation presented here.[5] Appellant must submit probative evidence on causal relationship based on an accurate factual background in order to establish the claim. The record does not contain such evidence in this case and the Board finds the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[6] the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[7] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[8]

ANALYSIS -- ISSUE 2

In the present case, appellant submitted medical evidence and a witness statement that had previously been submitted. He did not, therefore, submit new and relevant evidence with respect to the claim under section 10.606(b)(2)(iii). The Board also notes that appellant did not show that the Office erroneously applied or interpreted a point of law; or advance a new and relevant legal argument. Pursuant to the applicable regulations, he did not meet the requirements for reopening the claim for merit review and the Office properly denied the reconsideration request.

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[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

[6] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

[7] 20 C.F.R. § 10.606(b)(2).

[8] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The March 24, 2004 letter does indicate that appellant seeks medical benefits with respect to his emergency room treatment. The Office decisions do not address the issue of whether the treatment was authorized by the employing establishment or should have been authorized by the Office. The Office's regulation discuss medical benefits relating to emergency medical care at 20 C.F.R. §§ 10.300-10.304. The Board notes that section 10.304 provides that the Office may authorize treatment in cases involving emergencies or unusual circumstances even if a Form CA-16 (authorization of examination and/or treatment) was not issued.[9] On return of the case record the Office should consider the issue of authorization of emergency medical care in this case.

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty on April 3, 2003 as he did not submit sufficient medical evidence to establish causal relationship between a diagnosed condition and the employment incident. The Board further finds that he did not meet the requirements to reopen his claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 7, 2004 and December 15, 2003 are affirmed. On return of the case record the Office should consider the issue of emergency treatment authorization.

Issued: October 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[9] *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).