United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 06-2168**
	)	**Issued: February 5, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Orlando, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 22, 2005 merit decision denying her traumatic injury claim and July 11, 2006 nonmerit decision denying her request for review of the written record. 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 sustained a traumatic injury on October 25, 2004 causally related to factors of her federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely under 5 U.S.C. § 8124.

FACTUAL HISTORY

On June 11, 2005 appellant, a 37-year-old security screener, filed a traumatic injury claim, Form CA-1, alleging that on that date she inhaled jet fumes, resulting in an exacerbation of her asthma condition. In support of her claim, appellant submitted a July 1, 2005 work excuse, bearing an illegible signature, stating that she was unable to work from July 1 through 5, 2005 due to medical illness.

On August 18, 2005 the Office notified appellant that the evidence submitted was insufficient to establish her claim. It advised her to provide additional documentation, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. In response, appellant submitted physicians' notes, bearing illegible signatures, dated July 1, 5 and 12 and August 23, 2005. Notes dated July 1, 2005 reflected subjective complaints of fatigue, dyspnea, orthopnea, headache and rash. An assessment of "asthma" was provided. Notes dated July 5, 2005 indicated subjective complaints of fatigue, sore throat, dyspnea, wheezing, PNO, orthopnea, right-sided chest pain with deep inspiration, palpitations, dizziness and rash. The notes reflected objective evidence of a skin rash and an assessment of "asthma." August 23, 2005 notes revealed a mild worsening of appellant's skin rash and assessments of "asthma, dermatitis and allergic rhinitis." Unsigned notes dated July 12, 2005 reflected appellant's report that she had visited the emergency room on July 9, 2005, as a result of an asthma attack at work. Appellant also stated that her work area was hot, humid and dusty. The report reflected objective evidence of a worsened skin rash and assessments of "asthma/dermatitis." Appellant also submitted an undated report of a pulmonary function examination, which reflected normal pulmonary function.

By decision dated September 22, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed medical condition was causally related to the accepted work-related incident.[1]

Appellant submitted a recurrence of disability claim, dated August 17, 2005 and received on October 31, 2005. She alleged that her original injury occurred on June 11, 2005. Appellant stated that she continued to experience asthma attacks due to diesel release from the air vents, as well as dust and mildew at work. In a letter dated November 15, 2005, the Office informed appellant that no action would be taken on her recurrence claim, as her original claim had been denied.

Appellant submitted a request for review of the written record dated June 21, 2006. The record contains a copy of an envelope to the Branch of Hearings and Review postmarked June 30, 2006.

[1] The Board notes that appellant submitted additional evidence after the Office rendered its September 22, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Accordingly, the evidence submitted after the issuance of the September 22, 2005 decision cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

By decision dated July 11, 2006, appellant's request for review of the written record was denied as untimely, finding that the issue in this case could equally well be addressed by requesting reconsideration from the Office.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of the claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.[2] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, appellant must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[3]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[4] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[5]

An award of compensation may not be based on appellant's belief of causal relationship. 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 incidents is sufficient to establish a causal relationship.[6]

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[2] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[4] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[5] *John W. Montoya*, 54 ECAB 306 (2003).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

The medical evidence of record includes a report of a pulmonary function examination and physicians' notes that were either unsigned or contained illegible signatures. These forms, lack proper identification and cannot be considered as probative evidence.[7] Moreover, none of the reports submitted contain any facts supporting a relationship between the June 11, 2005 incident and appellant's diagnosed condition or any opinion as to the cause of her condition. The Board has long held that 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.[8]

Appellant expressed her belief that her asthmatic condition was exacerbated by her exposure to jet fumes on June 11, 2005. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related event is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report, which described appellant's symptoms and contained test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. There is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

[7] *See Merton J. Sills*, 39 ECAB 572 (1988).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.[11] Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[12] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[13]

ANALYSIS -- ISSUE 2

The Office issued a decision on September 22, 2005 denying appellant's traumatic injury claim. Appellant requested a review of the written record by submitting an appeal request form dated June 21, 2006 and postmarked June 30, 2006. By decision dated July 11, 2006, the Office denied appellant's request as untimely. As her request for review of the written record was postmarked on June 30, 2006, more than 30 days after the Office issued its September 22, 2005 decision, appellant was not entitled to a review of the written record as a matter of right.

The Office has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter or right.[14] The Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for a review of the written record on the grounds that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[15] In this case, the evidence of record does not establish that the Office took any action in connection with its denial of appellant's request for an oral hearing which could be construed to be an abuse of discretion. Therefore, the Office properly denied her request for an oral hearing as untimely under section 8124 of the Act.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury causally related to her employment. The Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely under 5 U.S.C. § 8124.

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[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. §§ 10.616 and 10.617.

[13] *Claudio Vasquez*, 52 ECAB 496 (2002).

[14] *Afegalai L. Boone*, 53 ECAB 533 (2002).

[15] *See André Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2006 and September 22, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board