

**United States Department of Labor
Employees' Compensation Appeals Board**

T.L., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Columbia, SC, Employer**)

**Docket No. 08-1198
Issued: October 2, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' January 15, 2008 merit decision, which denied her traumatic injury claim, and a February 21, 2008 nonmerit decision, which denied her request for reconsideration. 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 in the performance of duty; and (2) whether the Office properly refused to reopen her claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 2, 2007 appellant, then a 27-year-old transportation security officer, filed a traumatic injury claim alleging that on September 23, 2007 she picked up a large bag with both hands and felt a pull in the right rib area of her back causing a back condition.

On October 4, 2007 the Office informed appellant that the evidence received was insufficient to support her claim and that additional information was needed. It requested specifically a physician's opinion as to how appellant's injury resulted in a diagnosed condition. The Office also noted that medical evidence must be signed by a physician and that a finding of pain was not a medical diagnosis. No information was received.

In a November 5, 2007 decision, the Office denied appellant's traumatic injury claim. It accepted that the claimed incident occurred but found that there was no medical evidence of a diagnosed condition connected to the event.

On December 20, 2007 appellant requested reconsideration. Additional documents were submitted. A September 24, 2007 duty status report from a family nurse practitioner diagnosed muscle strain due to picking up a bag from the exit belt. Progress notes dated September 24, October 1 and 8, 2007 from a nurse were submitted. In a December 17, 2007 report, Dr. Ralph N. Riley, Board-certified in family medicine, diagnosed muscular skeletal pain and noted that it was sudden onset with right middle back pain after lifting on the job.

In a January 15, 2008 merit decision, the Office denied modification of the November 5, 2007 decision finding that the medical evidence was insufficient. It noted that reports not signed by a physician were not considered to be medical evidence and that the finding of pain was considered to be a symptom not a valid diagnosis.

On February 6, 2008 appellant requested reconsideration. A copy of Dr. Riley's December 17, 2007 attending physician's report was resubmitted.

In a February 21, 2008 nonmerit decision, the Office denied appellant's request for reconsideration on the grounds that merit review was not warranted as the only evidence submitted was duplicative and did not qualify as new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her 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 and/or specific condition, for which compensation is claimed are causally related to the employment injury.² These are the

¹ 5 U.S.C. §§ 8101-8193

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury.⁵ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained a back condition when she lifted a bag in the performance of duty on September 23, 2007. The Office accepted that the September 23, 2007 employment incident occurred as alleged. In order to establish that the employment incident caused a personal injury, appellant must submit medical evidence demonstrating that she sustained a medical condition and that was caused by the employment incident. Appellant has not met her burden of proof. The evidence of record does not provide a firm diagnosis from a physician. Dr. Riley diagnosed muscular skeletal pain. However, the mere diagnosis of pain does not constitute a basis for payment of compensation.⁷

The other reports submitted by appellant pertaining to her treatment were signed by nurses. A nurse is not a ‘physician’ as defined under the Act and any opinion offered is not considered to be competent medical evidence.⁸ Appellant has established that the September 23, 2007 employment incident caused a medical condition. The Board finds that appellant has failed to submit sufficient medical evidence to support her traumatic injury claim.

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 3. Additionally, in order to be considered rationalized, the 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 claimant’s specific employment factors. *Id.*

⁷ *Robert Broome*, 55 ECAB 339 (2004); *John L. Clark*, 32 ECAB 1618 (1981).

⁸ 5 U.S.C. § 8101(2). “Physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.”

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁹

Section 8128(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁰ Evidence or arguments that repeat or duplicate evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS -- ISSUE 2

The Office is required to reopen a case for merit review if appellant demonstrates that the Office erroneously applied a specific point of law, puts forth relevant and pertinent new evidence or presents a new relevant legal argument. Appellant did not argue that the Office erroneously applied a point of law nor did she present a new relevant legal argument. She did not submit relevant and pertinent new evidence. Appellant resubmitted a copy of Dr. Riley's report which had already been reviewed and considered by the Office. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³ Therefore appellant is not entitled to a review of the merits of her claim based on the requirements under section 10.606(b)(2).

CONCLUSION

The Board finds that appellant has not established that she sustained a traumatic injury. The Board also finds that the Office properly denied appellant's request for reconsideration.

⁹ 20 C.F.R. § 10.606(b)(2)(i-iii).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

¹² *Kevin M. Fatzer*, 51 ECAB 407 (2000).

¹³ *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 21 and January 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 2, 2008
Washington, DC

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

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

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