United States Department of Labor
Employees' Compensation Appeals Board

B.Q., Appellant	)	
and	)	**Docket No. 09-689**
	)	**Issued: November 23, 2009**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2009 appellant filed an appeal from a December 1, 2008 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain an injury on August 28, 2007 and from a July 10, 2008 nonmerit decision denying her request for an oral hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on August 28, 2007; and (2) whether the Office properly denied appellant's request for a hearing as untimely.

FACTUAL HISTORY

On October 24, 2007 appellant, then a 49-year-old internal revenue agent, filed a Form CA-1 (notice of traumatic injury) alleging that on August 28, 2007 she twisted her left ankle and hurt her knees, arms, hands and shoulders at a client's place of business. She tripped on a step in

the middle of a room and fell. Appellant did not stop work. The employing establishment controverted the claim.

By letter dated November 6, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence in support of her claim.

In a November 26, 2007 letter, appellant stated that she went to West Houston Medical Center on August 31, 2007 to obtain medication for the pain and inflammation caused by the August 28, 2007 work injury. She wanted her medical bills paid and submitted an August 31, 2007 receipt from the hospital. In August 31, 2007 discharge instructions, Dr. Hazel Cebrun, Board-certified in emergency medicine, advised that appellant was treated in the emergency department for contusions and strained ankle. No other information was provided.

By decision dated December 19, 2007, the Office denied appellant's claim. It found the evidence of record sufficient to establish that the August 28, 2007 work incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

In a May 20, 2008 request, postmarked May 22, 2008, appellant requested a telephonic hearing before an Office hearing representative. In a May 21, 2008 letter, she noted that her personal health insurance was refusing to pay the medical expenses related to the August 28, 2007 incident.

By decision dated July 10, 2008, the Office denied appellant's request for a telephonic hearing on the grounds it was untimely. It denied her request on the basis that the issue in the case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which established that the claimed medical condition was related to the established work-related event.

In an August 28, 2008 letter, appellant requested reconsideration. She submitted photographs of the floor where she fell. In an August 14, 2008 letter, Ahmed Momin of the Tri-Mart Express, verified that appellant fell in the store on August 28, 2007 while doing an audit for the employing establishment.

By decision dated December 1, 2008, the Office denied modification of its December 19, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is

[1] 5 U.S.C. §§ 8101-8193.

claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

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 or exposure, which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] 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 factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

ANALYSIS -- ISSUE 1

The Office accepted that on August 28, 2007 appellant fell at work while performing an audit. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused her claimed medical conditions.

The only medical evidence of record consists of the August 31, 2007 discharge instructions from West Houston Medical Center. Dr. Cebrun diagnosed contusions and a strained ankle. However, she did not provide any history of the August 28, 2007 incident. Dr. Cebrun did not explain whether appellant's diagnosed conditions were due to the incident

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *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).

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

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

[9] 20 C.F.R. § 10.303(a).

accepted in this case. As she failed to address the causal relationship between appellant's condition and the accepted incident, the Board finds this evidence to be of diminished probative value and insufficient to establish appellant's claim.[10] Dr. Cebrun did not identify the August 28, 2007 work incident in which appellant tripped on a step and fell. She did not address how the tripping and falling caused or aggravated any diagnosed medical conditions.

Appellant was notified by Office letter dated November 6, 2007 that she was required to provide medical evidence containing a diagnosis and a physician's opinion regarding the cause of her injury. She failed to submit sufficient medical evidence to establish that she sustained an injury resulting from the August 28, 2007 employment incident.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides in pertinent part as follows:

> Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.[11]

The claimant can choose between two formats: an oral hearing or a review of the written record.[12] The requirements are the same for either choice.[13] The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings or reviews of the written record. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking[14] and before the claimant has requested reconsideration.[15] However, when the request is not timely filed or when reconsideration has previously been requested, the Office may within its discretion, grant a hearing or review of the written record, and must exercise this discretion.[16]

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[10] *Elaine Pendleton*, *supra* note 2; *Michael I. Smith*, *supra* note 3. *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] 5 U.S.C. §§ 8101-8193, § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

[14] 20 C.F.R. § 10.616(a); *Tammy J. Kenow*, 44 ECAB 619 (1993).

[15] *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

[16] *Id.*

ANALYSIS -- ISSUE 2

The Office denied appellant's traumatic injury claim on December 19, 2007. Appellant's request for a hearing before an Office hearing representative was dated May 20, 2008 and postmarked May 22, 2008. As appellant's hearing request was made more than 30 days after the Office's December 19, 2007 decision, appellant was not entitled to a hearing as a matter of right.

The Office has the discretionary authority to grant a hearing even though a claimant is not entitled as a matter of rights. In its July 10, 2008 decision, it properly exercised its discretion. The Office considered the issue involved and had denied appellant's request for an oral hearing on the basis that her claim on the issue of whether she sustained an injury in the performance of duty on August 28, 2007 could be adequately addressed through the reconsideration process and the submission of additional evidence. The Board has held that the only limitation on the Office's authority is reasonableness. 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.[17] In the present case, the Office did not abuse its discretion in denying a discretionary hearing.

CONCLUSION

The Board finds that the Office properly found that appellant had filed an untimely request for an oral hearing. The Board further finds appellant failed to establish that she sustained an injury in the performance of duty on August 28, 2007, as alleged.

[17] *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated December 1 and July 10, 2008 are affirmed.

Issued: November 23, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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