

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

L.S., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Corpus Christi, TX, Employer**

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**Docket No. 07-1627
Issued: November 23, 2007**

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 March 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 6, 2007 denying her request for a hearing and a December 5, 2006 decision on the merits of her claim for compensation. 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 October 11, 2006; and (2) whether the Office properly denied her request for a hearing before an Office hearing representative.

FACTUAL HISTORY

On October 30, 2006 appellant, then a 44-year-old aircraft parts repairer, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in the performance of duty on October 11, 2006. She alleged that, while at her workstation, she became ill, lost consciousness and fell, striking her head on the floor.

By letter dated November 9, 2006, the Office requested that appellant submit additional factual and medical evidence regarding her claim. Appellant submitted witness statements with respect to the October 11, 2006 incident.

Appellant also submitted medical evidence. In a hospital report dated October 12, 2006, Dr. Rob Tschauner indicated that appellant had been admitted on October 11, 2006 after a syncopal episode at work.¹ He provided a history that appellant was not feeling well on October 11, 2006 and was seen by a nurse at the employing establishment. According to Dr. Tschauner, the nurse recommended that appellant go home, but she was not released and returned to her workstation. Appellant then reported losing consciousness and striking her head as she collapsed, with a headache afterward. Dr. Tschauner noted that appellant had a history of iron deficiency anemia due to hypermenorrhagia.

In a report dated October 13, 2006, Dr. Larry Grabhorn, a physician at the employing establishment health unit, indicated that appellant was seen by a nurse on October 11, 2006. He reported that appellant had stated that she was upset with the way she was treated by her supervisors. Dr. Grabhorn diagnosed “pallor, depress with anxiety, tachycardic.” Appellant also submitted a note dated November 8, 2006 from Dr. Tschauner who diagnosed post-traumatic headaches and stated that she was disabled from October 12 to November 22, 2006.

By decision dated December 5, 2006, the Office denied the claim for compensation. It found that the medical evidence was insufficient to establish an injury from the employment incident.

In a letter dated January 26, 2007 and postmarked January 27, 2007, appellant requested an oral hearing before an Office hearing representative. By decision dated March 6, 2007, it determined that the hearing request was untimely. The Office stated that it had considered the request and determined that the issue could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.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 which is alleged to have occurred. The second component is whether the

¹ Only page one of a four page report was submitted to the record.

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁵ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁶

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant fell and struck her head on October 11, 2006.⁸ To meet her burden of proof, appellant must submit probative medical evidence sufficient to establish a diagnosed condition causally related to the employment incident. The October 12, 2006 report from Dr. Tschauner was incomplete and failed to provide an opinion on causal relationship. Dr. Grabhorn did not provide a relevant medical opinion. Dr. Tschauner diagnosed post-traumatic headaches in his November 11, 2006 note, but he did not provide a complete history or a rationalized medical opinion on causal relationship between the diagnosed condition and the October 11, 2006 employment incident. The medical evidence of record is not sufficient to establish that the October 11, 2006 incident caused an injury

⁴ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

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

⁶ *Id.*

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁸ The Office did not deny the claim on the grounds that appellant had sustained an idiopathic fall. The Board notes that, to support a finding of an idiopathic fall, it would be the Office's burden to show that the fall was the result of a nonoccupational pathology rather than an unexplained fall. See *Id.*

It is appellant's burden of proof to establish the elements of her claim. Based on the evidence before the Office at the time of the December 5, 2006 decision, she did not meet her burden of proof in this case.⁹

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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...."

If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing as a matter of right.¹⁰ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,¹¹ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.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 merit decision was dated December 5, 2006. Appellant requested an oral hearing before an Office hearing representative in a letter postmarked January 27, 2007.¹⁴ Since this is more than 30 days after the December 5, 2006 decision, it is untimely and she is not entitled to a hearing as a matter of right. With respect to an untimely hearing request, the Office must exercise its discretion in deciding whether to hold a hearing. In this case, it advised appellant that she could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.¹⁵ The Board finds that the Office properly denied the request for an oral hearing in this case.

⁹ The Board is limited to review of evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

¹⁰ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹³ *Claudio Vazquez*, *supra* note 10. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

¹⁴ The date of the hearing request is the date of mailing, as determined by the postmark. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (June 1997).

¹⁵ See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

CONCLUSION

Appellant did not meet her burden of proof to establish an injury in the performance of duty on October 11, 2006. With respect to her request for an oral hearing, the Office's Branch of Hearings and Review properly denied the request.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 6, 2007 and December 5, 2006 are affirmed.

Issued: November 23, 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