

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

A.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Palatine, IL, Employer)

**Docket No. 12-1312
Issued: December 7, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2012 appellant filed a timely appeal from a March 13, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision denying his claim for a traumatic injury and a May 1, 2012 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on January 12, 2012, as alleged; and (2) whether OWCP properly refused to reopen his case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the May 1, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant requests that OWCP pay his outstanding medical bills.

FACTUAL HISTORY

On January 25, 2012 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a muscle strain and head contusion as a result of being rear-ended in an automobile while in the performance of duty on January 12, 2012.

Appellant submitted an Illinois Motorist Report and a hospital bill dated January 12, 2012 from Northwest Community Hospital in Chicago, Illinois.

In a February 8, 2012 letter, OWCP requested additional factual and medical evidence. It afforded appellant 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated March 13, 2012, OWCP accepted that the January 12, 2012 incident occurred as alleged but denied appellant's claim finding that he failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that he had not established fact of injury.

On April 18, 2012 appellant requested reconsideration and submitted an undated narrative statement reiterating that he was rear-ended on January 12, 2012. He indicated that he was taken to the hospital by ambulance and requested that OWCP pay his outstanding medical bills.

By decision dated May 1, 2012, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury⁴ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

ANALYSIS -- ISSUE 1

OWCP has accepted that the employment incident of January 12, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury as a result of the January 12, 2012 employment incident. The Board finds that he did not meet his burden of proof to establish a condition causally related to the January 12, 2012 employment incident.

In addition to the claim form, appellant submitted an Illinois Motorist Report and a January 12, 2012 hospital bill from Northwest Community Hospital in Chicago, Illinois. These documents do not constitute medical evidence and, therefore, fail to establish a medical diagnosis in connection to the January 12, 2012 employment incident. As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any medical evidence to support his allegation that he sustained an injury related to the January 12, 2012 employment incident, he has failed to meet his burden of proof to establish the medical component of fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.⁷ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁸

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP’s regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a

⁶ *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

⁷ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application. 5 U.S.C. § 8128(a).

⁸ See Annette Louise, 54 ECAB 783, 789-90 (2003).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁰ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹¹

ANALYSIS -- ISSUE 2

In support of his April 18, 2012 reconsideration request, appellant submitted a narrative statement. The Board notes that submission of this statement did not require reopening his case for merit review. As OWCP denied appellant's claim based on the lack of supportive medical evidence and his narrative statement merely reiterates factual history of record, his statement is not relevant and pertinent and is not sufficient to require OWCP to reopen his claim for consideration of the merits.¹²

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. As he did not meet any of the necessary requirements, he is not entitled to further merit review.

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. In his April 18, 2012 reconsideration request, appellant requested that OWCP pay his outstanding medical bills related to the employment incident. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed Form CA-16 within four hours.¹³ Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis.¹⁴ The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to OWCP for further development, to be followed by the issuance of a *de novo* decision on this issue.

⁹ 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁰ *Id.* at § 10.607(a).

¹¹ *Id.* at § 10.608(b).

¹² *See James W. Scott*, 55 ECAB 606 (2004).

¹³ *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

¹⁴ 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Chapter 3.300.3(a)(3), *supra* note 13.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on January 12, 2012, as alleged. The Board further finds that OWCP properly refused to reopen his case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a). The case will be returned to OWCP for consideration of whether appellant's medical expenses should be reimbursed.

ORDER

IT IS HEREBY ORDERED THAT the May 1 and March 13, 2012 decisions of the Office of Workers' Compensation Programs are affirmed. The case is remanded for further development regarding the reimbursement of medical expenses.

Issued: December 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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