

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

D.B., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer

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**Docket No. 12-1131
Issued: November 27, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 30, 2012 appellant, through his attorney, filed a timely appeal from a February 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On November 2, 2010 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2010 he sustained an emotional condition in the performance of duty. The time of the alleged incident was reported as 3:00 p.m. On the claim

¹ 5 U.S.C. § 8101 *et seq.*

form appellant stated that on that date “a group of seven to eight young men pulled out guns to shoot and kill another group of men in a black jeep.” The record contains an undated statement from an employing establishment manager indicating that on October 13, 2010 appellant had been given an assignment to complete. The manager stated that appellant called and asked for assistance in completing the route because he could not complete the route by 5:00 p.m. According to the manager, appellant was told there was no assistance available and he returned at 4:00 p.m. and resigned from the employing establishment. The manager stated that the police were called and there was no report of an alleged shooting.

By decision dated December 2, 2010, OWCP denied the claim for compensation. It stated that appellant was not in the performance of duty as the incident did not involve a threat to him and therefore was not related to his job duties.

On November 28, 2011 OWCP received a request for reconsideration. Appellant submitted an August 20, 2011 report from Dr. Alexander Babayants, a psychiatrist. The history provided stated that in October 2010 appellant was “held at gunpoint by some bandits in the midst of a gang war.”

By decision dated February 21, 2012, OWCP reviewed the case on its merits and denied modification. It found the factual aspect of the claim had not been met.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee’s emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

ANALYSIS

The initial question presented is whether appellant has alleged a substantiated compensable work factor with respect to his claim for compensation. If a compensable work factor is established, then the medical evidence is reviewed on the issue of causal relationship between a diagnosed condition and the compensable work factor.

As noted above, a claimant has the burden to submit a detailed description of the employment incident which he believes caused or adversely affected the claimed emotional condition. In this case, there is no detailed factual statement in support of the claim for compensation. The statement on the claim form briefly refers to an incident on October 12, 2010 where appellant saw young men pull out guns. The employing establishment refers to work activity on October 13, 2010, and it is not clear whether October 12, 2010 is the correct date. The history provided to Dr. Babayants states that appellant was held at gunpoint. Appellant has not provided a detailed factual statement that specifically discusses the time and place of the alleged incident, his work activity at the time and exactly what events he witnessed. Without such evidence, an adjudicator cannot make a proper determination as to whether the incident is substantiated as a compensable work factor.

It is appellant's burden of proof to submit the necessary evidence to establish the claim. When a claimant fails to submit a detailed factual statement regarding his claim for an emotional condition, he has not met his burden of proof.⁶ 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.

CONCLUSION

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

⁶ See *M.W.*, Docket No. 11-836 (issued December 5, 2011); *J.M.*, Docket No. 09-583 (issued September 17, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2012 is affirmed.

Issued: November 27, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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