

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

M.D., Appellant

and

**U.S. POSTAL SERVICE, LIVERNOIS POST
OFFICE, Detroit MI, Employer**

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**Docket No. 12-79
Issued: April 25, 2012**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 17, 2011 appellant, through her attorney, filed a timely appeal of a September 6, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying further merit review. Because over 180 days elapsed from the most recent merit decision of January 5, 2011 to the filing of this appeal on October 17, 2011, the Board lacks jurisdiction to review the merits of appellant's case, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 4, 2010 appellant, then a 30-year-old mail carrier, filed a traumatic injury claim alleging that on December 31, 2009 she developed post-traumatic stress disorder when she was robbed of her mailbag at gunpoint. She stated that the assailant held a gun to her left temple.

In a letter dated January 25, 2010, OWCP requested additional factual and medical evidence from appellant regarding the alleged December 31, 2009 incident. In a note dated January 18, 2010, Jeffrey Kane, M.D., opined that appellant could not return to work due to an anxiety state -- not otherwise specified as a result of being mugged at gunpoint while at work. On January 28, 2010 Dr. Young J. Kwon, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder and advised that appellant was totally disabled. In a report dated February 9, 2010, he reported that she was held at gunpoint while delivering mail on December 31, 2009. Dr. Kwon diagnosed post-traumatic stress disorder and listed appellant's symptoms of insomnia, nightmares, flashbacks, heightened anxiety, panic attacks, chest tightness and paranoia. He stated, "It is my opinion that [appellant's] symptoms and behavioral patterns appear to be directly related to the gunpoint incident that occurred while delivering mail on the job." Dr. Kwon opined that she was disabled.

In a decision dated March 1, 2010, OWCP denied appellant's claim finding that Dr. Kwon's report was not well rationalized as he stated that her condition "appeared to be directly related."

On February 26, 2010 Dr. Kwon completed a form report and indicated with a checkmark "yes" that appellant's post-traumatic stress disorder was due to being held at gunpoint on December 31, 2009. He stated, "Prior to [her] being robbed at gunpoint she did not express or present as experiencing the symptoms."

On March 16, 2010 appellant requested an oral hearing that was held on June 2, 2010. She described the employment incident of December 31, 2009 stating that a man jumped out of a car, put a gun to her head and demanded her mail satchel. Appellant begged for her life, gave him the satchel and he rushed back to his vehicle and drove away. She stated that he placed the gun at her left temple. Appellant then called 911 and ran for her postal vehicle. The police, postal police and postal inspectors came to the scene. Appellant explained the events to the law enforcement agencies and was then directed to resume her route. She did not resume her route but returned to the employing establishment to write a statement. Appellant requested to go to the medical clinic but her supervisor denied the request as she had not sustained a physical injury. She stated that postal inspectors required her to review suspects at the jail on January 25, February 1, 17, 19 and March 26, 2010.

Following the oral hearing, appellant submitted the police report. In a report dated July 8, 2010, Dr. Kwon diagnosed post-traumatic stress disorder as her symptoms developed after the traumatic incident at work. He stated that appellant's symptoms met the diagnostic criteria for post-traumatic stress disorder.

By decision dated July 20, 2010, the hearing representative denied appellant's claim finding that there was no sufficient medical evidence to establish that there was an actual diagnosable condition incurred specifically due to this incident.

Appellant requested reconsideration on September 8, 2010. She submitted a report dated September 14, 2010 from Dr. Kwon who diagnosed post-traumatic stress disorder as her symptoms were in direct relationship to her exposure to a traumatic event. Dr. Kwon found that appellant was totally disabled. In a report dated September 2, 2010, Dr. Pawan K. Garg, a Board-certified psychiatrist, noted the December 31, 2009 employment incident and diagnosed post-traumatic stress disorder as a direct result of the emotional trauma she sustained during her work duties. He opined that appellant was totally disabled.

OWCP referred appellant for a second opinion evaluation on November 22, 2010. On November 26 and 27, 2010 she stated that she did not plan to attend the second opinion evaluation. Appellant submitted medical evidence regarding the birth of her son on May 31, 2010.

By decision dated January 5, 2011, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision on the grounds that she had not submitted sufficient medical evidence and refused to cooperate with the scheduled second opinion evaluation.

Appellant requested reconsideration on June 22, 2011. She stated that she was resubmitting all the paperwork as well as additional evidence and legal argument. Appellant resubmitted the December 29, 2010 police report. She resubmitted Dr. Garg's September 2, 2010 report with a May 3, 2011 addendum that diagnosed post-traumatic stress disorder and opined that her condition was directly related to trauma sustained while performing her letter carrier job on December 31, 2009. Dr. Garg noted that appellant was held at gunpoint with severe emotional trauma fearing for her life. He stated that she was severely impacted by her symptoms and markedly limited in her abilities for daily functioning. Dr. Garg opined that appellant was totally and permanently disabled.

By decision dated September 6, 2011, OWCP declined to reopen appellant's claim for reconsideration of the merits on the grounds that her request did not include new and relevant evidence or raise substantive legal questions. It stated "Dr. Garg's addendum, the only piece of new evidence, dated May 3, 2011 simply repeated his prior notes dated September 2, 2010 without providing a detailed description of his findings upon evaluation or a well-reasoned explanation of how he arrived at his conclusion that your diagnosed post-traumatic stress disorder is causally related to the events on December 31, 2009."

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.² Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets

² 5 U.S.C. §§ 8101-8193, 8128(a).

forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁴

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁵

ANALYSIS

Appellant requested reconsideration of the January 5, 2011 merit decision on June 22, 2011. She resubmitted the police report addressing the events of December 31, 2009. Appellant also resubmitted Dr. Garg's September 2, 2010 report including a May 3, 2011 addendum. This addendum diagnosed post-traumatic stress disorder and opined that her condition was directly related to trauma sustained while performing her letter carrier job on December 31, 2009. Dr. Garg noted that appellant was held at gunpoint with severe emotional trauma fearing for her life. He opined that she was totally and permanently disabled.

The Board finds that the evidence submitted is not sufficient to require OWCP to reopen appellant's claim for consideration of the merits. As noted by OWCP, the police report was repetitious of evidence previously considered by OWCP. It reviewed Dr. Garg's September 2, 2010 report prior to issuing the January 5, 2011 merit decision. His May 3, 2011 addendum is essentially a restatement of the September 2, 2010 report with a statement of the events of December 31, 2009, a diagnosis of post-traumatic stress disorder and an opinion that appellant was disabled. Dr. Garg did not provide additional new evidence regarding the basis for his opinion such as medical reasoning explaining why he believed the December 31, 2009 employment incident resulted in his diagnosis. Without relevant new medical evidence addressing the central issue in appellant's claim, the causal relationship between her diagnosed condition and her accepted employment incident, she has not submitted sufficient evidence to require OWCP to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits as she failed to submit pertinent new and relevant medical evidence

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.608.

⁵ *M.E.*, 58 ECAB 694 (2007).

on the central issue of her claim, whether and how the December 31, 2009 employment incident resulted in her diagnosed condition of post-traumatic stress disorder.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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