



addition to his preexisting post-traumatic stress disorder due to an employment incident on October 26, 2001.

The Office requested additional factual and medical information by letter dated March 19, 2002. By decision dated April 19, 2002, the Office denied appellant's claim finding that he failed to establish an injury in the performance of duty as he did not establish an October 26, 2001 employment incident.

Appellant requested review by the Board on June 26, 2002. In an order dismissing the appeal, dated September 27, 2002, the Board found that appellant failed to provide the necessary information to proceed with the appeal process and dismissed his appeal.<sup>1</sup> Following the Board's September 27, 2002 order, appellant, through his attorney, requested reconsideration before the Office on April 17, 2003. By decision dated June 26, 2003, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit new evidence, argument or legal reasoning in support of his reconsideration request.

### **LEGAL PRECEDENT**

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup>

### **ANALYSIS**

The record contains new evidence submitted by appellant following the Office's April 19, 2002 decision and not previously considered by the Office or the Board. In a November 8, 2001 statement, appellant alleged that on September 26 or 27, 2001 he was smoking a cigarette on the dock of the employing establishment when a coworker, Wheldon Glass, lit a cross that he had made out of clothes hangers wrapped in toilet paper, and taped it to a post. After the cross burned, Mr. Glass took it down and put it in a trash bin. Appellant stated that he and Jon Warwick, a coemployee, witnessed Mr. Glass fashion a mask from a paper towel with eye holes resembling a Ku Klux Klan mask. Appellant stated that he reported the incident to Dennis Mason, who did not witness the incident and who shrugged off appellant's concerns.

Appellant also submitted medical treatment notes documenting his diagnosis of post-traumatic stress disorder and detailing the September 2001 incident. Dr. Calvin A. Michael, a Board-certified psychiatrist, reported on October 4, 2001 that appellant was perturbed, angry and despondent after the previous Thursday when a coworker had constructed and burned a cross made from coat hangers and toilet paper as well as devising a mask from a paper towel which resembled a Ku Klux Klan hood. Additional medical evidence suggested that appellant's symptoms due to his post-traumatic stress disorder escalated following this incident.

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<sup>1</sup> Docket No. 02-1896 (issued September 17, 2002).

<sup>2</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

The evidence submitted in support of appellant's claim is new and relevant as it relates to the reasons that the Office denied appellant's claim on March 19, 2002. In the March 19, 2002 decision, the Office stated, "The initial evidence of file was insufficient to establish that you experienced the claimed employment factor, at the time, place and in the manner alleged because a specific description of the October 26, 2001 or other work contributor was not provided." In support of his reconsideration request, appellant submitted a narrative statement describing Mr. Glass' actions on September 26 or 27, 2001 as requested and submitted medical evidence that he reported the incident to his attending physician. As appellant submitted new and relevant evidence regarding his claim, the Office should have reopened appellant's claim for further merit review.

**CONCLUSION**

The Board finds that appellant submitted new, relevant and pertinent information in support of his request for reconsideration. On remand the Office should reopen appellant's claim and consider the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2003 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: December 18, 2003  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
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