

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

PATRICIA P. TYSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mobile, AL, Employer**

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**Docket No. 04-2060
Issued: February 15, 2004**

Appearances:
Patricia P. Tyson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 18, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 9, 2003, which denied her claim for an emotional condition and a nonmerit decision dated May 10, 2004, which denied her request for reconsideration. Under 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 has established that she sustained an emotional condition causally related to compensable factors of her federal employment; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On July 18, 2003 appellant, then a 53-year-old window clerk, filed a claim alleging that she sustained an emotional condition causally related to her federal employment. She noted that a robbery took place on July 17, 2003 which caused her stress and anxiety. Appellant stopped

work from July 21 to August 1, 2003, for a previously scheduled vacation and was out on medical leave thereafter. Appellant elected an early retirement effective October 31, 2003.

In an August 18, 2003 letter, appellant stated that, until the July 17, 2003 robbery, she had never felt unsafe or in danger while working the window at her station. She indicated that the main window clerk had passed away suddenly on August 1, 2002 and management did not post the job for a bid, but gave the position to the leave replacement clerk. During the months October through December 2002, appellant stated that she had to work the window more than usual. She worried about the way some of the customers acted toward the clerks and that management never took her concern seriously. Appellant noted an earlier robbery, occurring on January 24, 2003, when she was working "in the back" handing out the accountable mail and indicated that it had caused her to feel anxious and violated although she was not working the window. She also related that work started stacking up over the next few months due to the shortage of people, but management would not bid the vacant job. On June 3, 2003 appellant stated that the manager had received a telephone call that the employing establishment had been broken into during the night, but the station opened as usual. She again felt concern for her safety and that of others. On June 6, 2003 a customer was mugged outside the front door of the station and appellant stated that this upset her. She broke out in a rash and went to see her physician, Dr. Frank A. Hall, on June 13, 2003. Appellant indicated that the lighting system was improved in the front parking lot around June 11, 2003 and, in late June, an Employee Assistance Program (EAP) counselor came to the station to talk and she spoke to the counselor for about an hour. On July 17, 2003 appellant stated that another armed robbery took place. She was coming back from her lunch break and panicked when she saw the parking lot blocked and police cars in front of the station. A counselor came to talk to the clerks and when she left to go home about 5:45 p.m., the business three doors down had just been robbed. On July 18, 2003 appellant stated that she was very nervous, anxious and worried about the window situation. On July 19, 2003 she was advised by the EAP to see Dr. Daniel L. Koch, a clinical psychologist. Appellant stated that the July 17, 2003 robbery was not an isolated incident and that, until something was done to protect the clerks at the window, it was very probable that someone might get hurt. Documentation pertaining to security issues was submitted along with medical evidence.

In progress notes dated June 13, 2003 from Dr. Hall and his associate Dr. Genesa G. Williams, both Board-certified family practitioners, reviewed a history that there had been several robberies by gunpoint at the employing establishment where appellant worked and that she had a possible post-traumatic stress disorder secondary to the robberies. Appellant was rendered totally disabled from work on July 18, 2003. In an August 1, 2003 note, Dr. Hall held appellant off work through August 15, 2003. In an August 5, 2003 report, Dr. Koch advised that appellant was suffering a post-traumatic stress disorder secondary to a robbery at her postal station. He advised that she was on medication, was in psychotherapy and would remain on sick leave for the next three weeks. In an August 11, 2003 report, Dr. Koch advised that Dr. Hall, had diagnosed post-traumatic stress disorder and that he concurred with Dr. Hall's formulation and treatment plan. He opined that the fact that appellant was at lunch during the most recent robbery lessened the trauma, but did not eliminate the perceived increase in danger of the work environment. In an August 22, 2003 report, Dr. Koch advised that he was unable to return appellant to work until she was reevaluated in approximately 30 days.

By decision dated September 9, 2003, the Office denied appellant's claim for an emotional condition finding that the incidents were not factors of employment sustained within the performance of appellant's duties and, thus, were not compensable.

On April 19, 2004 appellant requested reconsideration and submitted materials including a copy of an October 24, 2003 claim for an emotional condition pertaining to the above alleged incidents; copies of police reports for the robberies which had occurred at the employing establishment; copies of literature pertaining to stress and guides to feeling better; documents pertaining to security issues at the employing establishment which reflected that a full-time security guard was now on duty during the window service hours; documents pertaining to voluntary early retirement; progress notes from Dr. Hall dated June 13 to September 17, 2003 and an October 17, 2003 medical report from Dr. Koch.

By decision dated May 10, 2004, the Office denied appellant's request for reconsideration finding that she failed to submit relevant evidence or substantive legal questions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to a claimant's employment with the federal government. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employment or by the nature of the work.³

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

³ See *Lillian Cutler*, 28 ECAB 125 (1976).

The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disability resulting from an employee's feelings of job insecurity or the desire for a different position, promotion, or job transfer does not constitute personal injury sustained in the performance of duty within the meaning of the Act.⁴

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.⁵ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁶ Where appellant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.⁷

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁰ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹¹

ANALYSIS -- ISSUE 1

Appellant attributed her emotional condition to her work environment, which she contends was not secure for the window clerks due to the robberies which occurred. She expressed frustration over the employing establishment's response with regard to the security

⁴ *Id.*; see also *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁵ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ See *Barbara Bush*, 38 ECAB 710 (1987).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹¹ See *Lillian Cutler*, *supra* note 3.

problem. Appellant, however, has failed to establish any compensable factors of her employment in the development of her alleged emotional condition.

Although the evidence reflects that appellant's work site was the source of several robberies there is no indication that appellant was robbed or witnessed any of the robberies while in the course of her employment. On January 24, 2003 she was working in the back of the building and on July 17, 2003 she was not in the building but returning from lunch. While appellant expressed concern for her safety and that of the other clerks, she did not identify any specific duty or duties within her job description or any factors reasonably incidental thereto as a cause of her disability. As appellant's condition did not result from her day-to-day activities or specially assigned duties or any other requirement imposed by her employment, her emotional condition is not covered by the Act. Appellant has not presented any evidence that her emotional condition was a reaction or response to duties incidental to her employment.¹² Additionally, while appellant may have been frustrated with the employing establishment's response to the robberies her frustration from not being permitted to work in a particular environment is not compensable.¹³ Thus, appellant has not established a compensable work factor in this regard. Furthermore, there is no finding that the employing establishment erred or was abusive with regard to the administrative decisions pertaining to the security issues.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹⁴ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

Appellant's April 19, 2004 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁶

¹² See *Carla E. Phillips*, 39 ECAB 1040 (1988).

¹³ *Sherry L. McFall*, 51 ECAB 436 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ 20 C.F.R. § 10.608(b).

¹⁶ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii).

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted numerous evidence, which was of record and previously considered by the Office. 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 the case.¹⁷ Appellant has also submitted evidence pertaining to the security issue, her voluntary retirement and additional medical evidence and literature. This evidence, although new, fails to raise a substantive legal question nor does it constitute relevant evidence relative to the issue of whether the specific duties appellant performed contributed to her condition. Inasmuch as appellant did not submit any “relevant and pertinent new evidence,” she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹⁸

CONCLUSION

As appellant has failed to implicate any compensable factors of her employment in the development of her emotional condition, she has not met her burden of proof to establish her emotional condition claim. Furthermore, the Board finds that the Office properly refused to reopen appellant’s claim for further review of the merits of her claim.

¹⁷ *Denis M. Dupor*, 51 ECAB 482 (2000). With respect to the occupational claim form appellant filed, the Board notes that appellant should process the claim through the employing establishment if he wishes to pursue such a claim.

¹⁸ 20 C.F.R. § 10.608(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 10, 2004 and September 9, 2003 are affirmed.

Issued: February 15, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member