

submitted a May 5, 2003 duty status report of Dr. Alejo X. Sryvalin, a Board-certified surgeon, who provided appellant's physical restrictions and recommended that she work inside until she was seen by an employing establishment counselor. Appellant also submitted an unsigned activity status report dated May 5, 2003 which found that she experienced anxiety and that she could return to indoor work only until she was seen by an employing establishment counselor. The report also indicated that the anticipated date of her maximum medical improvement was May 19, 2003. In a May 5, 2003 request for medical services, Dr. Sryvalin provided a diagnosis of "300.00" and requested that appellant be permitted to attend follow-up evaluations. In a narrative report of the same date, Dr. Sryvalin provided a history that appellant was approached by a robber who was about to take all of her mail. She became very upset and went to see a counselor. Dr. Sryvalin noted appellant's medical, social and family history and reported a normal physical examination. He diagnosed anxiety syndrome and stated that appellant should be only working inside until she saw her counselor again to determine the psychological trauma. Dr. Sryvalin noted that the counselor would probably refer her to a family physician or psychiatrist and that she was discharged from treatment.

In response to appellant's claim, the employing establishment stated that she was not robbed. Rather, a young man grabbed the mail and then gave it back to her. The employing establishment noted that appellant related that the man did not intend to harm her and that she felt fine.

By letter dated June 16, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence to establish her claim. In a letter of the same date, the Office requested that the employing establishment provide additional information regarding appellant's claim.

In a July 8, 2003 narrative statement, appellant described the alleged incident, investigations conducted by the local police and postal inspector and her medical treatment. She described the alleged incident in a May 5, 2003 affidavit. Appellant submitted a May 8, 2003 disability certificate of a physician whose signature is illegible which indicated on that date, she could return to indoor work until further evaluation. A May 28, 2003 prescription from Dr. Edward Kocharian, a Board-certified internist, found that appellant could only work inside the office. In a June 23, 2003 letter, Kathi L. Gant, a licensed social worker and therapist, stated that appellant underwent a psychosocial assessment on June 6, 2003 and that she would be seen for ongoing therapy in the clinic. Ms. Gant stated that appellant was seen on June 23, 2003 and that she was being scheduled to see Dr. John B. Wilhelm, a psychiatrist, in two weeks. She indicated that more thorough treatment recommendations would be made following Dr. Wilhelm's assessment.

In a May 7, 2003 accident report, an employing establishment safety officer stated that a supervisor reported that appellant alleged that a man came from behind and snatched the mail out of her arm while she was placing it in a box on a porch. Appellant stated that the man tried to return the mail to her, but she refused to accept it. The police investigated the incident and appellant was not physically injured, but a little shaken. She sought medical treatment and a diagnosis was unknown. Statements from management officials provided a description of the incident that she did not feel threatened by her assailant.

By decision dated July 24, 2003, the Office found the evidence of record sufficient to establish that the May 3, 2003 incident occurred as alleged, but insufficient to establish that appellant's emotional condition arose from this factor.

Appellant submitted an unsigned copy of Dr. Sryvalin's May 5, 2003 narrative report. In a December 3, 2003 letter, Ms. Gant diagnosed an adjustment disorder with mixed disturbance of mood and conduct and indicated that appellant continued to be treated by her office.

In an undated letter received by the Office on January 6, 2004, appellant requested reconsideration of the July 24, 2003 decision. By decision dated January 9, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and, thus, insufficient to warrant a merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁵ When an employee experiences emotional stress in carrying out her employment 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. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁶ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁹ 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.¹⁰ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹¹

ANALYSIS -- ISSUE 1

There is no dispute that on May 3, 2003 appellant was delivering mail when an unidentified man grabbed it from her hands. Therefore, the Board finds that appellant has established a compensable factor of employment. Her burden of proof, however, is not discharged by the fact that she has established a compensable employment factor. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that it is causally related to the accepted compensable employment factor.¹²

Dr. Sryvalin's form report dated May 5, 2003 provided appellant's physical restrictions and recommended that she only work indoors. In a May 5, 2003 request for medical services, Dr. Sryvalin provided a diagnosis of "300.00" and reiterated that appellant not work outside the office. Similarly, Dr. Kocharian found that appellant could only perform indoor work. However, the physicians failed to identify a specific diagnosis or address how her condition was causally related to the May 3, 2003 employment factor. Neither Dr. Sryvalin nor Dr. Kocharian

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

¹¹ *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

¹² See *William P. George*, 43 ECAB 1159, 1168 (1992).

provided a history of the accepted incident or provided findings on examination. The Board finds that these reports are insufficient to establish appellant's claim.

Dr. Sryvalin's May 5, 2003 narrative report provided a history of the May 3, 2003 employment factor and diagnosed anxiety syndrome. Dr. Sryvalin did not address the causal relationship between the accepted work factor and the emotional condition. To be probative, a medical report must be based on a complete factual and medical background and address the issue of causal relationship.¹³ The Board finds that his report is insufficient to establish appellant's claim.

An unsigned activity report dated May 5, 2003 found that appellant had anxiety and that she could return to only indoor work as of that date until she was seen by a counselor. A disability certificate from a physician whose signature is illegible indicated that as of May 8, 2003 appellant was able to return to work indoors only until further evaluation. However, the report and disability certificate are insufficient to establish appellant's claim because it is not clear that they are from a physician.¹⁴ Therefore, the Board finds that as the report and disability certificate lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

The June 23, 2003 letter of Ms. Gant, a licensed social worker and therapist, indicated that appellant was receiving psychological treatment and that she was being referred to Dr. Sryvalin for further evaluation. A licensed social worker is not a physician as defined under the Act and is therefore not competent to render a medical opinion.¹⁵ With no evidence that Dr. Sryvalin adopted Ms. Gant's findings as his own, her letter is of no probative value.

Appellant has not submitted sufficient rationalized medical evidence establishing that she sustained an emotional condition causally related to the accepted compensable employment factor. The Board finds that she has failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹⁶ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁷ To be entitled to a merit review of an Office decision

¹³ See *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁴ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (Reports not signed by a physician lack probative value).

¹⁵ See 5 U.S.C. § 8101(2); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000).

¹⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁷ 20 C.F.R. § 10.606(b)(1)-(2).

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.¹⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In a July 24, 2003 decision, the Office accepted that an unidentified man grabbed mail from appellant while she was working on her route on May 3, 2003 but found the medical evidence of record insufficient to establish that her emotional condition was caused by the accepted employment factor. Appellant disagreed with this decision and requested reconsideration on January 6, 2004. The relevant underlying issue in this case is whether appellant's emotional condition was caused by the accepted work factor.

Dr. Sryvalin's May 5, 2003 narrative report was previously of record. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.¹⁹ As such, the Board finds that Dr. Sryvalin's report is insufficient to warrant further merit review of appellant's claim.

Ms. Gant's December 3, 2003 letter found that appellant has an adjustment disorder with mixed disturbance of mood and conduct and that she required further treatment. Ms. Gant's letter was insufficient to warrant further merit review of appellant's claim because, as noted, a licensed social worker is not a physician as defined under the Act. There is no evidence establishing that her diagnosis was adopted by Dr. Sryvalin.²⁰

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. Further, she failed to submit relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.²¹

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).²²

¹⁸ *Id.* at § 10.607(a).

¹⁹ *Edward W. Malaniak*, 51 ECAB 279 (2000).

²⁰ *Ernest St. Pierre*, *supra* note 14.

²¹ *See James E. Norris*, 52 ECAB 93 (2000).

²² Appellant can submit new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2004 and July 24, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 8, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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