



In a statement to Supervisor Mike Dade dated April 4, 2005, appellant indicated that, while she was delivering mail one week earlier, a white male came from behind a building, walked up to her and asked if he had any mail. Appellant allegedly told him that she had “just started.” She stated that the man stayed beside her and “proceeded to take a hand gun from his pocket.” Appellant noted that the man did not pull the gun “all the way out” but kept taking it “in and out of his pocket until she was done.” She stated that, although the man did not threaten her, he scared her.

In an employee statement of injury dated August 15, 2005, appellant claimed that she had informed Mr. Dade of the alleged incident on the date it occurred. She could not remember the exact date, but believed that it occurred on March 7, 2005. Appellant alleged that she walked through the front gate of a house on Gorham Street and began putting mail into mailboxes, whereupon a man came from the back gate, walked up to her, “pulled a gun out and asked [her] did he have any mail.” She claimed that the man stood next to her and she believed he was going to shoot her. Appellant decided to walk away, so that he would be forced to shoot her in the back.

By letter dated September 12, 2005, the Office notified appellant that the information submitted was insufficient to establish her claim and advised her to provide within 30 days additional details relating to the alleged events and a medical report providing a diagnosis and reasoned opinion as to the cause of her condition. The Office specifically asked her whether she had filed a police report, whether the assailant had threatened her, and what was said during the altercation.

Appellant submitted a report dated September 14, 2005 from Dr. Howard R. Bass, a treating physician, reflecting diagnoses of anxiety induced depression and acute stress disorder. Dr. Bass stated that she was temporarily totally disabled up to and including October 26, 2005. Appellant also submitted a note dated September 14, 2005 from Dr. Gilbert Walton, a Board-certified internist, reflecting a diagnosis of chronic anxiety. Neither physician reported any history of the alleged incident.

In a letter dated January 4, 2006 to Mr. Smith of the employing establishment, appellant stated that she experienced panic attacks and anxiety due to a man pulling a gun on her while she was delivering her mail route during March 2005. She asked him to “change [her] craft,” so that she would be able to work inside.

In a statement to the office of her Congressman on January 19, 2006, appellant alleged that on March 31, 2005 while on her mail route she was accosted by an unknown male with a gun. She alleged that she reported the incident to Mr. Dade. Appellant further stated that, although she initially continued to work, she began having panic attacks, became totally “stressed out” and afraid for her life and stopped work on September 14, 2005.

On January 26, 2006 appellant filed a claim for benefits for the period September 13, 2005 through January 20, 2006. The record contains work excuses signed by Dr. Walton dated October 25, 2005 and January 11, 2006 covering the period October 25, 2005 through February 5, 2006.

In a decision dated February 8, 2006, the Office denied appellant's claim, finding that the evidence submitted did not establish that she had sustained an injury as alleged. The Office noted that she had provided contradictory statements regarding the alleged incident and that appellant's claim was weakened by the fact that it was filed five months after the alleged incident.

On March 8, 2006 appellant requested review of the written record. She submitted a February 8, 2006 work excuse from Dr. Walton, who stated that appellant required a medical leave of absence from February 5 through April 3, 2006. The record contains a mental disorder questionnaire form dated February 24, 2006, from Dr. Jay Wung, a treating physician, who provided a diagnosis of post-traumatic stress disorder. He stated that appellant's panic attacks, fear of being around others and distressing memories and nightmares "all started in March 2005, after she was held at gunpoint."

By decision dated May 22, 2006, the Office hearing representative affirmed the February 8, 2006 decision denying appellant's claim, finding that the evidence failed to establish that she sustained an injury in the performance of duty. The hearing representative stated that she had not established the occurrence of an alleged incident at the time, place and in the manner alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged, that the injury was sustained while in the performance of duty and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>4</sup> An employee has not met this burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001) (when an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury). *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(q) and (ee) (2002) (occupational disease or illness and traumatic injury defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *See Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *see also Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

validity of the claim.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

### ANALYSIS

The first component to be established is that appellant actually experienced the employment incident which is alleged to have occurred. An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>8</sup> Consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established an incident arising in the performance of duty.

The Board finds that appellant has failed to establish that the alleged incident occurred at the time, place and in the manner described. She alleged panic attacks as a result of an unknown man pulling a gun on her while she delivered mail. However, there are such inconsistencies in the record to cast serious doubt upon the occurrence of the incidents as alleged. She has offered numerous and conflicting versions of the facts. Appellant alleged in her CA-1, filed five months after the fact, that she developed panic attacks as a result of a man pulling a gun on her while she was delivering mail. In an April 4, 2005 statement, she claimed that a white male walked up to her and asked if he had any mail. Appellant alleged that he stayed beside her and proceeded to take a gun from his pocket, although he did not pull it all the way out and did not threaten her. On August 15, 2005 she indicated that she could not remember the exact date of the alleged incident, but believed that on March 7, 2005 a man walked up to her while she was delivering mail and pulled a gun on her. On that occasion, appellant alleged that she walked away so that he would be forced to shoot her in the back. In a January 19, 2006 statement to her congressman's office, appellant stated that she was accosted by an unknown male with a gun.

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<sup>5</sup> *Betty J. Smith* 54 ECAB 174 (2002); *see also Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

<sup>6</sup> *See Kathryn A. Tuel-Gillem*, 52 ECAB 451, 452 (2001).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>8</sup> *Betty J. Smith*, *supra* note 5.

Although the Office asked appellant to clarify the facts and circumstances surrounding the alleged employment incident, she failed to do so. Rather, her various conflicting reports undermine the credibility of her allegations. Appellant's vague allegations were not supported by corroborating evidence such as witness statements or a police report and were controverted by the employing establishment. Moreover, the record reflects that she failed to immediately report the alleged incident to her supervisor and could not remember the exact date the incident allegedly occurred. The record contains no contemporaneous factual evidence indicating that the claimed incidents occurred as alleged.

The medical evidence of record also fails to support appellant's allegations. The reports of Dr. Bass and Dr. Walton provided no history of the alleged incident. The only medical report of record that addresses a history of the alleged incident is the February 24, 2006 mental disorder questionnaire form signed by Dr. Wung. He stated that her condition began in March 2005, after she was "held at gunpoint." This account of the facts does not comport with any version provided by appellant. There is no medical evidence of record that provides a contemporaneous history of the alleged incident.

Appellant has failed to present sufficient evidence to establish that she was injured at the time, place and in the manner alleged. The Board finds that the Office properly denied her claim in its February 8 and May 22, 2006 decisions.<sup>9</sup>

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof that she sustained an injury in the performance of duty.

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<sup>9</sup> As appellant has not met her burden of proof to establish the fact of injury, it is not necessary to discuss the probative value of the medical reports. *Tracey P. Spillane*, 54 ECAB 608 (2003). Appellant filed this claim as an occupational disease claim. Because the claimed disability did not occur over a period of more than one day or shift, but allegedly resulted from a distinct incident on one particular day, appellant's claim should be treated as a traumatic injury claim. *See supra* note 2. However, when an employee claims that she sustained injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, whether her claim is for traumatic or occupational injury. *See Kathryn A. Tuel-Gillem, supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22 and February 8, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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