

FACTUAL HISTORY

Appellant filed a traumatic injury claim, Form CA-1, on November 30, 2004 alleging that she sustained sepsis and a shutdown of internal organs as a result of a dog bite on November 17, 2004. She reported on the claim form that she was a readjustment counseling technician and she was attempting to pet a client's dog at the time of the incident. In response to the inquiry from the Office, appellant submitted a statement on December 17, 2004 indicating that she was in the parking lot of the employing establishment saying goodbye to a client. The client's truck was parked just outside the front door, with several dogs in the car. Appellant stated that she reached in the truck to pet one of the dogs and was bitten.

An Office memorandum dated January 21, 2005 stated that, according to the office manager at the employing establishment, appellant was walking a veteran and his wife to their vehicle on November 17, 2004. There were hunting dogs in the vehicle and appellant reached in the partially opened window to pet the animals. The office manager stated that the parking lot was not owned or maintained by the employing establishment.

By decision dated January 21, 2005, the Office denied the claim for compensation. The Office found that the medical evidence was insufficient to establish the claim.

In a letter dated January 31, 2005, appellant requested reconsideration of her claim. By decision dated March 2, 2005, the Office found that the request for reconsideration was insufficient to warrant merit review of the claim.

Appellant again requested reconsideration and submitted additional medical evidence regarding her claim. In a decision dated July 14, 2005, the Office reviewed the case on its merits. The Office modified the basis for the denial of the claim, finding that the injury did not occur in the performance of duty. According to the Office, the action of reaching in the truck to pet the dog was not a requirement of her job or reasonably incidental to her job duties.

On July 10, 2006 appellant again requested reconsideration. In addition to submitting medical evidence, appellant submitted a job description, her own statement as well as witness statements. She stated that her job was to assist Vietnam Veterans with readjustment to civilian life. Appellant noted that the employing establishment had created programs involving the use of pets to help veterans resocialize. According to her, the petting of a veteran's dog was equivalent to reaching out to the client and showing acceptance of their family. With respect to November 17, 2004, appellant stated that she was saying goodbye to a veteran and his wife who were in the process of moving. After verifying with the veteran that the dogs were safe, she reached in the station wagon and was bitten.

In a statement dated July 6, 2006, appellant's supervisor, Larry Wilson, stated that veterans have difficulty readjusting to their community and it is important to demonstrate acceptance of their pets. He stated that appellant's attempt to pet the dogs on November 17, 2004 was a requirement of her job or reasonably incidental to her job as a readjustment counseling technician. Appellant also submitted a statement from Farrell Udell, a former supervisor, who discussed the "Vets with Pets" program and stated that veterans were encouraged to bring in pets and it was part of the job responsibilities of all employees to pet the

animals. Mr. Udell concluded that appellant's petting of the dog was a requirement of her position. In a statement dated June 20, 2006, another former supervisor, Lillian Dorcas, opined that reaching out and petting a veteran's animal was necessary to establish rapport with the veteran. Ms. Dorcas stated that she considered petting a veteran's animal a requirement of the job of readjustment counseling technician. There is also a July 3, 2006 statement from a veteran who participated in the "Vets with Pets" program and received counseling from appellant.

In a decision dated August 4, 2006, the Office determined that the request for reconsideration was insufficient to warrant merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

ANALYSIS

In the present case, the Office determined that appellant was not in the performance of duty as she was not, at the time of the dog bite, fulfilling her job duties or engaged in something incidental to her job duties.³ On reconsideration, appellant submitted a job description, her own statement and statements from current and former supervisors regarding her job duties. The evidence is new evidence and relevant to the issue presented. The statements discuss appellant's responsibilities with respect to veterans and in particular the interaction with pets of veterans as

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." *Valerie C. Boward*, 50 ECAB 126 (1998). One of the elements of "in the course of employment" is an employee reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. *Janet M. Abner*, 53 ECAB 275, 278 (2002).

part of her job duties. The supervisors opined that attempting to pet the veteran's dogs was part of appellant's job duties or incidental to those duties. Since the basis for denial of the claim was that an attempt to pet a veteran's dog on November 17, 2004 was not fulfilling her job duties or reasonable incidental thereto, evidence regarding job duties and the relationship to veteran's animals is clearly relevant to the issue.

As noted above, relevant and pertinent evidence not previously considered by the Office is sufficient to warrant reopening the claim for merit review. The Board finds that appellant has met the requirement of 20 C.F.R. § 10.606(b)(2)(iii) by submitting relevant and pertinent evidence not previously considered by the Office. The case will be remanded for merit review.

CONCLUSION

Appellant submitted new and relevant evidence sufficient to warrant reopening the claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 24, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board