

In a December 19, 2006 memorandum, appellant related that, at approximately 11:00 a.m. on December 12, 2006, she was walking through housing projects toward a parking lot where her postal vehicle was parked; she had just completed her deliveries in that section of the projects. She was walking toward her vehicle when she came upon a man who was yelling loudly and uttering belligerent statements. Appellant put her head down and tried to ignore him and continued to walk toward her vehicle when suddenly the man said, "We can do this the right way or the wrong way, it's your choice." She then looked up and noticed the man was brandishing a silver handgun and pointing it in her direction. While appellant continued to walk toward her vehicle, she looked behind her and noticed another man standing there. She then looked back at the man holding the gun, who suddenly put the gun behind his back, tucked it into his blue jeans and put his coat over it. Once appellant realized that she was not being targeted, she walked to her vehicle, opened the door and drove away. After she had traveled a short distance, she began crying and shaking. Appellant then called the employing establishment and the police to inform them that the incident had occurred. Her supervisor, Justin Parisi, arrived at the scene, as did the police, who took her statement and report of the gun incident.

Appellant stated that she attempted to return to work and finish her rounds for the day; however, she began to experience flashbacks, weakness and shakiness. She stated that she was constantly on edge and looking over her back. Appellant indicated that she returned to work the following day but had difficulty performing her job due to the trauma and stress stemming from the December 12, 2006 incident.

Appellant submitted Forms CA-20 and CA-17 reports from Dr. Peter Kinkel who diagnosed anxiety and checked a box indicating that the diagnosed condition was caused or aggravated by the December 12, 2006 work incident.

In a statement dated December 16, 2006, appellant's supervisor, Mr. Parisi related:

"On December 12, 2006 I received a telephone call from [appellant]. She stated that someone pulled out a gun and pointed at another individual in front of her. I immediately went out to investigate. Upon arriving I called 911. The police arrived and took a description of the individual. I stayed with [appellant] for about 40 minutes. I asked her if she could continue the route and she said yes. But she did not want to deliver around where the incident took place. I advised her to skip that part of her route and later if she felt okay she could go back and deliver it. When I left her she said that she could continue. I told her to call the station if she had any other issues."

In a December 22, 2006 report, Dr. Stengel related that appellant was experiencing headaches, black vision, generalized shakiness, numbness on the left side of her face and sleeplessness. She indicated that appellant was totally disabled.

By letter dated December 27, 2006, the Office requested that appellant submit additional medical evidence in support of her claim, including a comprehensive medical report describing how the claimed incident on December 12, 2006 resulted in the diagnosed condition and provide factual evidence, which would establish that he had developed an emotional condition caused by factors of his employment.

Appellant submitted several additional treatment slips from January 2007 from Dr. Kinkel. In a treatment slip dated January 12, 2007, Dr. Kinkel excused appellant from work through February 7, 2007 due to her diagnosed condition of anxiety.

By decision dated February 2, 2007, the Office denied appellant's emotional condition claim. The Office accepted the December 12, 2006 incident as a compensable factor of employment. It found, however, that the medical evidence of record did not establish that her claimed emotional condition was causally related to the accepted employment factor. The Office stated that the medical evidence that appellant had submitted was not sufficient to establish that she had sustained her emotional condition in the performance of duty.

On February 17, 2007 appellant requested reconsideration. She did not submit any additional medical evidence.

By decision dated March 5, 2007, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that the emotional condition is causally related to compensable employment factors.¹

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.²

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach merely upon the existence of an employee/employer relationship.³ Instead, Congress provided for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." "In the course of employment" deals with the work setting, the locale and time of injury whereas, "arising out, of the employment," encompasses not only the work setting but also a causal concept, the

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Larry J. Thomas*, 44 ECAB 291 (1992).

requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁴ The Board has also adopted the positional risk doctrine which supports compensation in situations where the only connection of the employment with the injury is that the obligations placed the employee in the particular place at the particular time when he was injured by some neutral force, meaning by "neutral" neither person to the claimant nor distinctly associated with the employment.⁵

ANALYSIS -- ISSUE 1

In the instant case, the Office accepted one incident as compensable; *i.e.*, the December 12, 2006 incident in which a man pointed a gun in appellant's direction while she was delivering mail. The Board finds that, given the circumstances described by appellant and accepted as factual by the Office hearing representative, the December 12, 2006 incident constitutes a compensable factor of employment.⁶ Appellant was in the "course of employment" at the time of the alleged injury as she was completing her mail carrier duties, on her route, when she was allegedly injured by the "neutral" force.

However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁷ Appellant submitted treatment slips from Dr. Kinkel, which did not contain a rationalized medical opinion, based on a proper factual and medical background, explaining his opinion on causal relationship or otherwise relating his diagnosis to the factor found compensable in this case. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Kinkel does not demonstrate a complete or accurate factual background or provide an opinion relating appellant's December 12, 2006 incident in which a man brandished a gun and pointed it in her direction as a causative factor to her diagnosed emotional condition. Furthermore, the form reports from Dr. Kinkel that support causal relationship with a check mark are insufficient to establish the claim, as the Board has held that without further explanation or

⁴ *Id.*

⁵ *Id.*

⁶ *Mary J. Summers*, 55 ECAB 730 (2004).

⁷ *See William P. George*, 43 ECAB 1159, 1168 (1992).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

rationale, a checked box is not sufficient to establish causation.⁹ For these reasons, the Board finds the reports of Dr. Kinkel insufficient to establish that appellant sustained an emotional condition causally related to her compensable work factor.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), 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 constituting relevant and pertinent evidence not previously considered by the Office.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. She did not submit any medical evidence in connection with her February 17, 2007 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

⁹ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹⁰ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

¹¹ *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the March 5 and February 2, 2007 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 10, 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