

By decision dated July 24, 2001, the Office denied the claim, finding that the evidence was insufficient to establish an incident as alleged. Appellant requested reconsideration of her claim in a letter dated August 1, 2001. In a statement dated July 16, 2001, appellant indicated that on May 21, 2001 the front tire of the forklift she was operating slipped into a large hole in a trailer loaded with pallets. She indicated that she reported the hole in the trailer to her supervisors. Appellant stated that she had previously sustained an injury in October 1999 when a forklift fell through the floor, and in April 2001 was involved in another incident with a forklift.¹ According to appellant, she had begun to seek treatment from a psychologist in early May 2001 to help her deal with frustration regarding safety at the workplace and filed a safety grievance. She reported that she was shaking and sick to her stomach after the May 21, 2001 incident.

In a report dated July 18, 2001, Dr. Gary Arthur, a psychiatrist, provided a history and results on examination. He stated that appellant described daily anxiety with panic attacks since May 21, 2001. Dr. Arthur diagnosed chronic anxiety with panic attacks “directly aggravated by on-the-job accident of May 21, 2001.” The psychiatrist also diagnosed psychophysiologic gastrointestinal syndrome that was also directly aggravated by the May 21, 2001 incident.

In a statement dated August 21, 2001, a supervisor, Linda Mungin, indicated that appellant reported that she fell through the truck, but “the documentation states that [appellant] was unloading mail off a trailer on a forklift when the left front wheel fell into a hole which allowed the forklift to sink approximately six inches on that corner.” She did not identify the referenced documentation. Ms. Mungin indicated that appellant did not report the incident until June 13, 2001.

By decision dated September 24, 2001, the Office reviewed the merits of the case. The Office found that appellant’s desire for safety was not compensable, nor were any factors compensable with respect to appellant’s grievance, firing or supervisor’s reaction to a request for paperwork. The decision stated that there were no compensable work factors; it also stated that the July 24, 2001 decision was modified “in the type of denial, from fact of injury to performance of duty, based on the evidence of record.”

In a letter dated November 30, 2001, appellant again requested reconsideration. She submitted evidence regarding her grievance and a statement of a supervisor that appellant had told him of an April 2001 incident regarding a fall in a hole with a forklift. Appellant also indicated that, although she was upset at the way the safety issues were handled, but the panic attacks were caused by slipping or falling into holes in the trailers.

By decision dated June 16, 2004, the Office reviewed the case on its merits and denied modification of the prior decisions. The Office found that appellant did not submit evidence establishing a compensable work factor.

¹ She indicated that as a result of the October 1999 incident she had been fired in June 2000 and returned to her job in December 2000. Appellant stated that, when she requested a claim form on June 11, 2001, a supervisor, Mr. Bereheiko became very loud and stated that he knew what was going on.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.³ 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.⁴

ANALYSIS

This is a traumatic injury claim for an injury on May 21, 2001. A traumatic injury claim is one based on incidents occurring within one workday or shift.⁵ Appellant alleged that the front wheel of the forklift she was operating on that date slipped into a hole in the pallet trailer, and that she sustained an emotional condition as a result. She referred to October 1999 and April 2001 incidents, and these incidents may be relevant as a factual background for the present claim, but the claim in this case is for an injury on May 21, 2001. To properly adjudicate the claim the Office must make findings with respect to the May 21, 2001 incident. The July 24, 2001 Office decision found that the incident did not happen as alleged. The September 24, 2001 decision stated that the basis for denial was changed from fact of injury to performance of duty, without providing additional explanation. If the Office was accepting an incident as alleged, this is inconsistent with the finding that there were no compensable work factors. A supervisor referred to documentation regarding the incident but the Office did not make specific findings as to the incident.

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

³ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁴ *Id.*

⁵ 20 C.F.R. § 10.5(ee) (1999).

The case will be remanded to the Office to make proper findings with respect to the factual allegation of a forklift incident on May 21, 2001. If the incident is established, the Office should properly consider the medical evidence of record. After such further development as the Office deems necessary it should issue an appropriate decision.

CONCLUSION

The Board finds that the Office did not make adequate findings with respect to the primary factual allegation in the case, and the case will be remanded for an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 16, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 15, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member