

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEANNE RAYMER-THAUT and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Allen Park, Mich.

*Docket No. 95-1677; Submitted on the Record;  
Issued January 5, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic right upper extremity injury in the performance of duty on September 4, 1991.

The Board has duly reviewed the case record in the present appeal and finds that appellant sustained an employment-related avulsion chip fracture of the distal interphalangeal joint of her right thumb and contusions and sprains of her right hand and wrist joints on September 4, 1991.

An employee who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim.<sup>2</sup> The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>3</sup>

In the present case, appellant alleged that she sustained an employment-related right upper extremity injury on September 4, 1991 when a coworker, Jimmy Taylor, struck her right upper extremity with his fist during a heated discussion regarding which employee was entitled to take leave on October 4, 1991. The Office of Workers' Compensation Programs developed the factual aspect of appellant's claim and, in a statement of accepted facts dated October 16, 1991, it accepted that, during an argument regarding entitlement to leave, appellant raised her

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

<sup>3</sup> *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

right hand towards Mr. Taylor with her index finger extended and Mr. Taylor “smacked” appellant’s hand away.<sup>4</sup>

By decision dated November 8, 1991, the Office denied appellant’s claim that she sustained an injury in the performance of duty on September 4, 1991 because the September 4, 1991 argument concerned an administrative matter rather than a job duty and appellant engaged in “willful misconduct” by not following her supervisor’s order to stop arguing. By decision dated and finalized May 6, 1993, an Office hearing representative affirmed the Office’s November 8, 1991 decision. Appellant again requested reconsideration of her claim and submitted evidence regarding an Equal Employment Opportunity (EEO) complaint she filed for sexual harassment against Mr. Taylor. By decision dated March 23, 1994, the Office denied modification of its prior decisions.

Appellant then filed an appeal of her case with the Board. On October 4, 1994 the Director of the Office filed a motion to remand the case. The Office acknowledged that an inappropriate performance of duty standard had been used in evaluating appellant’s case and asserted that the standard in *Josie P. Waters*<sup>5</sup> and related cases should be applied. In *Waters*, the Board noted that, even though a certain altercation involves a nonwork topic, it may be compensable because the employment brought the claimant and the coworker together and created the conditions which resulted in the altercation. If an altercation arose out of a prior personal relationship from a claimant’s domestic or private life, which is imported into the workplace with no contribution by the employment, then the incident may be held not to have arisen out of employment.<sup>6</sup> The Director indicated that on remand the Office should apply the appropriate standard to appellant’s case, to include requesting additional evidence regarding appellant’s EEO complaint in order to determine whether the September 4, 1991 altercation arose out of a prior personal relationship from appellant’s domestic or private life, which was imported into the workplace with no contribution by the employment. By order granting remand, the Board set aside the Office’s March 23, 1994 decision and remanded the case to the Office for development of the case consistent with the Office’s October 4, 1994 motion.

In connection with the remand to the Office, appellant submitted additional evidence regarding her EEO complaint. By decision dated March 8, 1995, the Office denied appellant’s claim on the grounds that she did not show she sustained an injury in the performance of duty on September 4, 1991. The Office indicated that it did not have sufficient evidence to determine whether the September 4, 1991 altercation was imported from appellant’s domestic or personal life.

The Board finds that the evidence establishes the occurrence of an employment incident on September 4, 1991. The September 4, 1991 altercation arose out of appellant’s employment

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<sup>4</sup> The record contains numerous statements of persons who were involved in the September 4, 1991 incident. Appellant stopped work on September 4, 1991, returned to light-duty work on September 23, 1991, and stopped work for various periods thereafter.

<sup>5</sup> 45 ECAB 513 (1994).

<sup>6</sup> See also *Agnes V. Blackwell*, 44 ECAB 200 (1992); *Shirley I. Griffin*, 43 ECAB 573 (1992).

in that she and Mr. Taylor became involved in a dispute regarding the use of leave on October 4, 1991. The Board finds, under the factual circumstances presented, the incident must be considered compensable because the employment brought appellant and Mr. Taylor together and created the conditions which resulted in the altercation pertaining to which employee would take leave. The Board has carefully reviewed the evidence of record, including the documents regarding appellant's EEO complaint, and notes that there is no evidence that the September 4, 1991 altercation arose out of a prior personal relationship from appellant's domestic or private life which was imported into the workplace with no contribution by the employment.<sup>7</sup>

The Board must now determine whether the medical evidence supports that appellant sustained an injury due to the accepted employment incident of September 4, 1991. In support of her claim, appellant submitted a September 5, 1991 report in which Dr. Jasubhai K. Desai, an attending physician specializing in internal and occupational medicine, indicated she reported that on September 4, 1991 a coworker injured her right hand, wrist, and forearm by striking her with his wrist.<sup>8</sup> Dr. Desai indicated that appellant sustained an avulsion chip fracture of the distal interphalangeal joint of her right thumb; collateral ligament injury and post-traumatic neuralgia of her right thumb; contusions and sprains of her right hand and wrist joints; and post-traumatic tendinitis of her right distal forearm. In an undated note, Dr. Desai indicated that appellant was disabled for the period September 4 to 22, 1991 and that she should perform one-handed work for the period September 23 to October 13, 1991.

The Board notes that the medical evidence establishes appellant sustained an employment-related avulsion chip fracture of the distal interphalangeal joint of her right thumb and contusions and sprains of her right hand and wrist joints on September 4, 1991. These injuries constitute the type of simple injuries which would not require the provision of medical rationale by a physician to be established as employment related.<sup>9</sup>

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>10</sup> The Board notes that while the reports of Dr. Desai are not completely rationalized regarding whether appellant sustained any employment-related condition on September 4, 1991 in addition to the above noted accepted conditions or whether she sustained disability due to her September 4, 1991 employment injury,<sup>11</sup> they are consistent in indicating that appellant sustained such additional employment-

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<sup>7</sup> See *supra* notes 5 and 6 and accompanying text. The Office indicated that appellant did not respond to a request for a statement regarding her relationship with Mr. Taylor, but the Board notes that the record contains sufficient factual evidence to evaluate appellant's claim.

<sup>8</sup> Appellant indicated that the maximum impact was to her thumb.

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(c) (April 1993). This portion of Office procedure provides the example of an employee who twists his or her knee in the performance of duty and receives prompt medical treatment and notes that, in such a circumstance, a physician would only have to provide a simple affirmation of causal relationship.

<sup>10</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>11</sup> Dr. Desai also indicated that appellant sustained an employment-related collateral ligament injury and post-

related conditions and disability, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof in this regard, they are sufficient to require the Office to further develop the medical evidence and the case record.<sup>12</sup>

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained any employment-related condition on September 4, 1991 in addition to the accepted employment conditions, *i.e.*, an avulsion chip fracture of the distal interphalangeal joint of her right thumb and contusions and sprains of her right hand and wrist joints, and whether she sustained disability due to her September 4, 1991 employment injury. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 8, 1995 is modified to reflect that appellant met her burden of proof to establish that she sustained an employment-related avulsion chip fracture of the distal interphalangeal joint of her right thumb and contusions and sprains of her right hand and wrist joints on September 4, 1991, but the case is not in posture for decision regarding whether she sustained any employment-related condition on September 4, 1991 in addition to these accepted conditions or whether she sustained disability due to her September 4, 1991 employment injury. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
January 5, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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traumatic neuralgia of her right thumb and post-traumatic tendinitis of her right distal forearm.

<sup>12</sup> See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).