

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VINCENT A. ROSENQUIST and U.S. POSTAL SERVICE,  
POST OFFICE, Atlanta, GA

*Docket No. 01-1554; Submitted on the Record;  
Issued October 24, 2002*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on March 2, 2000.

On March 4, 2000 appellant, then a 50-year-old carpenter/locksmith, filed a traumatic injury claim alleging that he sustained a right wrist injury when he was physically assaulted on March 2, 2000 by Corporal Harold Bowen, a police officer with the employing establishment. He claimed that his wrist was twisted and he sustained torn ligaments and nerves; he noted that he sustained a reinjury of a prior wrist injury.<sup>1</sup>

In several statements, appellant indicated that on March 1, 2000 he received a parking ticket on the employing establishment premises, which was issued by an employing establishment police officer. He indicated that he called the police control center at the employing establishment's premises to discuss the ticket because he felt that he had been selectively ticketed. Appellant claimed that Corporal Bowen became belligerent with him and hung up the telephone. He claimed that when he went to the police control center Corporal Bowen again acted in a belligerent manner and then grabbed him and pushed him six feet backwards. Appellant asserted that he complained to Sergeant Judson West about Corporal Bowen's actions and he was directed to return the following day to speak to Captain Walter Hawkins. He indicated that on March 2, 2000 at about 7:55 a.m., after loading his truck and receiving his work assignment for the day, he drove his vehicle to the parking area outside the police control center and went inside to speak to Captain Hawkins about the incidents of the prior day.<sup>2</sup> Appellant claimed that he asked to speak to Captain Hawkins and was invited into

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<sup>1</sup> Appellant sustained a right wrist injury on February 7, 2000 when he carried a ladder at work. He returned to regular duty shortly after the February 7, 2000 injury.

<sup>2</sup> Appellant asserted that at this time he was following his usual practice by using his half-hour break to take a breakfast break. He claimed that the employing establishment's "zero tolerance policy" made it a duty for him to report what he felt was an assault by Corporal Bowen.

his office. He asserted that he heard Captain Hawkins say “send him in” and, as he proceeded towards the office, Sergeant West put his hand on his chest and stopped his forward motion. He alleged that several minutes later he was directed to Captain Hawkins’ office and that Captain Hawkins was “belligerent” towards him from the outset of the conversation. Appellant claimed that Captain Hawkins was upset about his claims regarding selective ticketing and being pushed by Corporal Bowen. He asserted that Captain Hawkins directed him to leave his office and that he complied. Appellant indicated that he then walked to his vehicle at about 8:20 a.m. and began to perform a customary inspection of the vehicle.

Appellant claimed that he encountered Corporal Bowen, who began to laugh at him “in a snide manner” and that he in turn “returned the laugh.”<sup>3</sup> He asserted that Corporal Bowen “suddenly became enraged” and, using vulgar language, threatened to assault him. Appellant stated that he walked towards Corporal Bowen “protesting his threat and vulgar language” and that Corporal Bowen threw a lit cigarette at his feet and got into his vehicle. He claimed that he grasped the cigarette butt in his right hand and tapped the window of Corporal Bowen’s vehicle with his left forefinger while indicating that the butt should be placed in the ashtray. Appellant asserted that Corporal Bowen “flew into a rage” and forcefully pushed open the door of his vehicle; he claimed that his knees and wrist were struck by the door and he was pushed backwards. He alleged that Corporal Bowen quickly got out of the car, grabbed his right wrist and twisted it downward until he dropped the butt. Appellant claimed that he then called an emergency number in order to have Corporal Bowen arrested and that the employing establishment officers who arrived at the scene refused to arrest him. He indicated that he was resolved not to leave the area until his claim of assault was properly handled. Appellant asserted that he did not state he would have to be arrested before he left the area. He noted that he sustained additional injury to his wrists when he was arrested and the police officers handcuffed his arms behind his back. Appellant indicated that the police officer refused his repeated requests to not use handcuffs on his injured right wrist.<sup>4</sup>

By decision dated May 10, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not meet his burden of proof to establish that he sustained an injury while in the performance of duty on March 2, 2000. By decision dated and finalized December 19, 2000, an Office hearing representative affirmed the Office’s May 10, 2000 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 2, 2000.

The Federal Employees’ Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> The term “in the performance of duty” has been interpreted to be the

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<sup>3</sup> Appellant alleged that Corporal Bowen was ordered to appear at his vehicle in order to confront him.

<sup>4</sup> Appellant was charged with criminal trespass, failure to leave the premises and physical interference with a police officer. The record does not contain any court documents detailing the outcome of these charges. Appellant testified at the oral hearing before an Office hearing representative that he was convicted of the failure to leave the premises charge and that the other two charges were dismissed.

<sup>5</sup> 5 U.S.C. § 8102(a).

equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."<sup>6</sup> The phrase "course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.<sup>7</sup>

In essence, appellant claimed that his right wrist was injured in the performance of duty on March 2, 2000, when Corporal Bowen hit his wrist with the door of his vehicle, when Corporal Bowen grabbed his wrist and when his arms were handcuffed behind his back. The Board has carefully reviewed appellant's claims and the available witness statements and finds that he was not in the performance of duty at the time of his claimed injury on March 2, 2000.

The weight of the factual evidence, as detailed below, shows that appellant's actions at the time of his claimed injury were not sufficiently related to his work duties to arise within the performance of duty. Although Corporal Bowen acknowledged that he hit appellant's wrist with the door of his vehicle and grabbed his wrist, the evidence shows that appellant was not in the performance of his work duties at the time of these incidents. Appellant engaged in an escalating verbal altercation with the police officer, which was unrelated to his work duties. He repeatedly ignored orders by police officers to leave the postal control center and repeatedly challenged the officers to arrest him. Moreover, Corporal Bowen only acted physically towards appellant after he ignored direct orders, advanced aggressively towards him and jabbed a cigarette near his face. Appellant was arrested and handcuffed after he ignored repeated orders to leave the employing establishment.<sup>8</sup> Although he has argued that on March 2, 2000 he was fulfilling his duty to report alleged wrongdoing, he has not adequately explained how his aggressive and improper actions on that date were related to his work duties. The numerous witness statements detailed below establish that appellant's actions at the time of his claimed injury did not occur in the performance of duty.<sup>9</sup>

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<sup>6</sup> *Bernard D. Blum*, 1 ECAB 1, 2 (1947).

<sup>7</sup> *See Eugene G. Chin*, 39 ECAB 598, 601-02 (1988).

<sup>8</sup> The evidence of record further shows that appellant was placed off-duty just prior to his arrest and handcuffing.

<sup>9</sup> Appellant claimed that Corporal Bowen threatened him with physical harm on March 2, 2000 and that other officers acted improperly on that date, but he did not submit sufficient evidence to establish these claims. In statements dated March 14 and April 10, 2000, Don Benefield, a coworker, stated that appellant told him Corporal Bowen had injured his wrist and knee by closing a door on them and that another police officer had pushed him. It does not appear, however, that Mr. Benefield actually witnessed these incidents.

In several statements,<sup>10</sup> Corporal Bowen indicated that on March 1, 2000 appellant complained to him about a parking ticket he had received and that, due to appellant's persistence, he asked him to come to the police control center. He stated that when appellant returned to the police control center he had to hold his hand up to prevent appellant from proceeding into Captain Hawkins' office uninvited. Corporal Bowen noted that he informed appellant to wait until Captain Hawkins called for him, but that Sergeant West then had to place his hand on appellant's chest to keep him from advancing. He stated that during a brief conversation on March 2, 2000 regarding the parking ticket received the prior day appellant indicated that "you are going to have to arrest me or lock me up."<sup>11</sup> Corporal Bowen noted that he then placed the cigarette he was smoking on the ground and got into his patrol vehicle. He indicated that appellant tried to place the cigarette down the window between the rubber seal and the glass and that he instructed him to move away from the vehicle. Corporal Bowen stated that appellant failed to obey his instruction and that, because he was startled by appellant being so close to his vehicle, he opened the car door which resulted in pushing appellant back. He indicated that appellant called him a "litterbug" and stated: "you are going to have to arrest me" while jabbing the cigarette towards his face. Corporal Bowen stated that he grabbed appellant's hand and wrist and shoved him backwards because he felt that appellant was going to hit him in the face. He noted that when he returned to the office Captain Hawkins advised him that he should issue appellant a violation notice for physical interference with a police officer.<sup>12</sup>

In several statements,<sup>13</sup> Captain Hawkins indicated that on March 2, 2000 at 8:00 a.m., appellant came to the police control center to talk to him about a ticket he had received the prior day. He noted that Sergeant West advised appellant he should wait and that he would be called at the appropriate time. Captain Hawkins indicated that appellant tried to push his way past Sergeant West and Corporal Bowen and that they had to restrain him to prevent him from passing.<sup>14</sup> He noted that he then invited appellant to his office and, after appellant indicated he wanted to file a complaint against Sergeant West and Corporal Bowen, he advised him that he needed to put his complaint in writing. Captain Hawkins stated that appellant asserted he would not put the complaint in writing and that he then advised appellant to leave his office. He indicated that appellant threw the ticket on his desk and instructed him to "take care" of it. Captain Hawkins stated that he and appellant discussed the matter of the ticket and that he asked appellant to leave the office. He noted that appellant asserted he was not going to leave the office and that he leaned over the desk and stated: "lock me up." Captain Hawkins noted that appellant was acting in an agitated and irrational manner. He indicated that appellant eventually left his office and that he was later advised appellant had reported a fight, but that he had determined there was no such fight. Captain Hawkins stated that appellant returned to the entrance of the employing establishment and accused Corporal Bowen of hurting his hand by

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<sup>10</sup> Two of the statements were dated April 7, 2000 and one was undated.

<sup>11</sup> Corporal Brown stated that he asked appellant, "what was the matter; are you off your medicine?"

<sup>12</sup> The record also contains a police report, completed by Corporal Bowen on March 2, 2000, which provides a similar account of the events of that date.

<sup>13</sup> Two of the statements were dated April 10, 2000 and one was undated.

<sup>14</sup> He indicated that Sergeant West held out his arms to stop appellant.

hitting it with the door of his vehicle. He noted that Kris Huntley, a supervisor, indicated that he was placing appellant off the clock and, after appellant refused to leave, he was arrested by Sergeant West and Corporal Bowen.

In a statement dated April 5, 2000, Sergeant West indicated that on March 2, 2000 at 8:00 a.m., appellant visited the police control center and requested to speak with Captain Hawkins. He noted that appellant entered the office at a fast pace and he asked him to stop. Sergeant West indicated that appellant ignored his request to stop, so he placed his hand on his chest. He noted that the conversation between appellant and Captain Hawkins became loud and appellant was asked to leave. Sergeant West indicated that appellant refused to leave and he stated many times that the officers would have to arrest him before he left. He indicated that he later saw appellant standing beside Corporal Bowen's vehicle holding a cigarette. Sergeant West noted that appellant was later arrested after he ignored police instructions to leave the employing establishment premises and stated several times, "the only way I will [leave] is to be arrested."<sup>15</sup>

In a statement dated April 5, 2000 and an undated statement, Mr. Huntley, a supervisor, indicated that, after appellant had a conversation with Captain Hawkins on March 2, 2000, regarding the ticket from the prior day, he ordered appellant to leave the area and go to the health unit.<sup>16</sup> He noted that appellant stated: "I am not going anywhere until someone goes to jail" and that he placed appellant off the clock at 9:00 a.m.<sup>17</sup> Mr. Huntley indicated that appellant continued to refuse to leave and the postal police then arrested him. In an undated statement, Steven Engle, a supervisor, indicated that appellant refused to leave the employing establishment after Mr. Huntley ordered him three times to do so.

Although, appellant's injury apparently did occur on the premises of the employing establishment after he had started work for the day, this alone is not sufficient to establish entitlement to compensation benefits.<sup>18</sup> As the above-detailed witness statements show, appellant has not established that his injuries on March 2, 2000 arose out of his employment. His injury did not occur while he was engaged in the employing establishment's business or in the duties he was employed to perform. Instead, appellant was injured during altercations with police unrelated to his work duties.<sup>19</sup> No employer benefit was derived by appellant's involvement in these altercations.<sup>20</sup> There is no evidence to indicate that appellant was engaged

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<sup>15</sup> The record also contains a police report, completed by Sergeant West on March 2, 2000, which provides a similar account of the events of that date.

<sup>16</sup> Sergeant West indicated that Captain Hawkins advised him that appellant refused to provide a written complaint and repeatedly refused to leave the police station.

<sup>17</sup> The record contains a document signed by Mr. Huntley which indicates that appellant was placed in an off-duty status effective March 2, 2000 at 9:00 a.m., due to an incident with police officers on that date. Appellant claimed that he was placed off the clock at 9:15 a.m., *i.e.*, at a time after his arrest.

<sup>18</sup> See *George A. Fenske, Jr.*, 11 ECAB 471, 473 (1960).

<sup>19</sup> See *Jeremiah Bowles*, 38 ECAB 652, 653-54 (1987) (finding that the employee claiming injury during an altercation with police did not adequately show how his involvement in the altercation related to his work).

<sup>20</sup> See *Charles Crawford*, 40 ECAB 474, 477-78 (1989).

in activity incidental to his employment at the time of his claimed injury. The substantial evidence of record indicates that appellant was restrained and handcuffed because of actions that had no relation to the fulfillment of his employment duties.<sup>21</sup> Hence, the claimed right wrist injury did not occur in the performance of duty and is not compensable under the Act.<sup>22</sup>

The decision of the Office of Workers' Compensation Programs dated December 19, 2000 is affirmed.

Dated, Washington, DC  
October 24, 2002

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>21</sup> See *Clarence Williams, Jr.*, 43 ECAB 725, 729 (1992).

<sup>22</sup> See *Edward Savage, Jr.*, 46 ECAB 346 (1994). The employee alleged an emotional condition following his interaction with the employing establishment's police who were called when he refused to leave the premises following a verbal altercation with a coworker. The Board found the employee's emotional condition was self-generated and did not arise in the course of his federal employment.