United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 06-1147**
	)	**Issued: September 25, 2006**
DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, Dallas, TX, Employer	)	

Appearances:
L.L., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated February 9, 2006 finding that she had not established an injury on December 16, 2005 in the performance of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on December 16, 2005.

FACTUAL HISTORY

On December 28, 2005 appellant, then a 47-year-old clerk, filed a traumatic injury claim alleging that, on December 16, 2005, a contractor, Ella Hannon, attacked her. She stated that Ms. Hannon placed her hands on her and physically forced her into office furniture injuring her face, neck and back.

In a letter dated January 6, 2006, the Office requested additional factual and medical evidence from appellant and allowed 30 days for a response.[1] The Office sent a separate letter to the employing establishment dated January 6, 2006 requesting that her supervisor provide information regarding any animosity between the injured employee and the assailant by reason of a personal association away from work. The record does not contain a response from appellant's supervisor.

Appellant submitted a statement dated December 16, 2005 noting that, on that date, she was standing outside the cubicle of Marilyn Reagler, a coworker, while Ms. Hannon and Ms. Reagler talked. Ms. Reagler noticed appellant in the entrance, and Ms. Hannon "turned around and immediately attacked me; grabbed my face and smashed me down with her hand by pushing me backwards and kept on smashing my face down with her hand." Appellant then asked, "Why you are doing this to me and putting your nasty hand on my face?" Ms. Hannon repeatedly replied, "Come on, girl and get this money." Appellant related that she followed Ms. Hannon to her office and retrieved a check for $17.32 from her, "which she owed me."

Appellant noted that she had repeatedly attempted to collect payment from Ms. Hannon beginning on December 7, 2005. Eventually, appellant asked that Ms. Hannon give the payment to Ms. Reagler, but Ms. Hannon refused and insisted that appellant retrieve the check herself.

Appellant also submitted a police report dated December 21, 2005, which noted that she reported that the assault occurred as Ms. Hannon had agreed to purchase some Mary Kay cosmetic items from appellant on December 7, 2005 and had not yet made payment despite ongoing discussions. She stated that on December 16, 2005 Ms. Hannon was visiting with Ms. Reagler at her office. Appellant waited until Ms. Hannon had finished talking to Ms. Reagler to approach her. She stated that Ms. Hannon saw her and then attacked her by grabbing her face and pushing her backward and smashing her down with her hand. Appellant believed that Ms. Hannon was attempting to make her fall down on her back. She pushed Ms. Hannon's hand back from her face.

According to Ms. Hannon, appellant approached her while she was still talking with Ms. Reagler, appellant was loud and "got in her face." She then leaned toward appellant and instructed her not to "get in her face and not be so loud when speaking to her." Ms. Hannon stated that she was unclear whether she hit appellant or not. Appellant then accompanied Ms. Hannon to her desk to retrieve the payment.

Ms. Reagler's statement indicated that she and Ms. Hannon were talking when appellant approached Ms. Hannon and requested that Ms. Hannon address her directly rather than discussing her with Ms. Reagler. She stated that Ms. Hannon then spoke to appellant and pushed her face with her open hand. Appellant tried to reach Ms. Hannon's face, but due to a difference in arm reach was unable to do so. She and Ms. Hannon then left to retrieve a check.

Deborah Harrison, a coworker, also provided a statement for the police report. She overheard the dispute between appellant and Ms. Hannon but did not witness it. Ms. Harrison

[1] The Office asked that appellant explain whether there was any animosity between the two parties away from work, the relationship she had with Ms. Hannon prior to the assault both work related and personal.

stated that she was aware that appellant wished to receive a check from Ms. Hannon in payment for a cosmetic purchase and that appellant was afraid that Ms. Hannon would yell at her. She noted that Ms. Hannon made appellant nervous and that on a previous occasion she had escorted appellant to Ms. Hannon's office to receive the check.

Appellant also submitted medical evidence and physical therapy notes in support of her claim for a cervical and lumbar strain/sprain resulting from the alleged assault.

By decision dated February 9, 2006, the Office denied appellant's claim finding that she failed to establish an injury occurring in the performance of duty. It found that the alleged assault did not arise out of appellant's employment as it was due to "personal contacts with Ms. Hannon … and the issue of receiving a check from Ms. Hannon for Mary Kay products." The Office further noted that, although appellant was in the office space where her office or cubicle was located, she was not in her office or cubicle performing her work duties. Finally, the Office stated that there was no indication that work contributed to or facilitated the dispute, which arose from the selling of Mary Kay products.[2] The Office concluded that the physical attack by Ms. Hannon did not arise out of appellant's employment.[3]

LEGAL PRECEDENT

Congress, in providing 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.[4] Instead, Congress provided for the payment of compensation for personal injuries sustained while in the performance of duty. The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated:

> "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."[5]

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

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[2] The Office relied on a quotation from A. Larson, *The Law of Workers' Compensation.*

[3] Appellant submitted additional new evidence with her appeal to the Board. As the Office did not review this evidence in reaching a final decision, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

[4] *Janet M. Abner*, 53 ECAB 275, 277-78 (2002).

[5] *Vincent A. Rosenquist*, 54 ECAB 166, 168 (2002).

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.[6]

Generally, the Board has held that personal disputes between coworkers are not compensable if they arise outside the scope of employment and are then imported into the workplace.[7] Larson, in addressing assaults arising out of employment, states the following:

> "Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work.... Assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would not otherwise be made, the employment becomes a contributing factor. When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life and is not exacerbated by the employment, the assault does not arise out of the employment under any test."[8]

ANALYSIS

Appellant alleged that she sustained injury to her face, neck and back after a contractor, Ms. Hannon, pushed her face down. Statements from appellant and Ms. Hannon as well as the witness, Ms. Reagler, a coworker, establish that the assault occurred after appellant requested payment of a debt from Ms. Hannon resulting from the sale of Mary Kay cosmetics. By decision dated February 9, 2006, the Office denied appellant's claim that she sustained an injury on December 16, 2005 in the performance of duty as the assault arose from a personal contact.

There is no dispute in the instant case that, at the time of the December 16, 2005 assault by Ms. Hannon, appellant was at a place and time where she would be expected to carry out the employing establishment's business. The issue is whether appellant was reasonably fulfilling her duties or engaged in something incidental to her duties.[9]

There is no indication on the record that appellant was assaulted because of any actions related to employment. The evidence establishes that at the time of appellant's injury she had observed Ms. Hannon engaged in a conversation with Ms. Reagler, waited outside Ms. Reagler's cubicle until she was acknowledged and then approached Ms. Hannon in order to recover a debt from her which arose through the sale of cosmetics. These actions of selling cosmetics and receiving payment have no relationship to appellant's employment duties. In *James P. Schilling*[10] the Board found that retrieving monies owed by a coworker was not in anyway

[6] *Id.*

[7] *James P. Schilling*, 54 ECAB 641, 646 (2003).

[8] A. Larson, *The Law of Workers' Compensation* §§ 8.00; 8.02(1)(a) (2004).

[9] *Vincent A. Rosenquist*, 54 ECAB 166 (2002); *Clarence Williams, Jr.*, 43 ECAB 725, 728 (1992); *Walter Roszkowski*, 34 ECAB 986 (1983).

[10] 54 ECAB 641 (2003)

related to work duties.[11] Appellant was not in the performance of her work duties at the time of the incident, but was instead engaged in a personal action of recovering a debt, which has no relationship to her work duties. No employer benefit was derived by appellant's recovery of the debt and there is no evidence to indicate that appellant was engaged in activity incidental to her employment at the time of her claimed injury. Appellant has not asserted any relationship between the fulfillment of her employment duties and the actions which led to the assault. Hence, her claimed injuries did not occur in the performance of duty and are not compensable under the Act.[12]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on December 16, 2005 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 9, 2006 decision is affirmed.

Issued: September 25, 2006
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

[11] *Id.* at 645.

[12] *See Rosenquist and Williams, supra* note 9.