

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ANGELA J. BURGESS and DEPARTMENT OF COMMERCE,  
BUREAU OF THE CENSUS, Philadelphia, PA

*Docket No. 01-1276; Submitted on the Record;  
Issued June 5, 2002*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On July 26, 2000 appellant, then a 34-year-old enumerator, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she suffered a head injury as a result of an aggravated assault that occurred in the performance of duty on July 7, 2000. She noted that her six-year-old son, who was with her, was also injured. The employing establishment controverted the claim, contending that appellant was not working at the time of the injury. In support of her claim, appellant submitted a form from Penn Care wherein Dr. Nyok-Kheng Lim, a Board-certified internist, indicated that appellant was treated for a head injury and nausea on July 18, 2000.

In order to clarify the claim, a telephone conference was held between the Office of Workers' Compensation Programs and appellant on September 5, 2000. At that time, she indicated that her son was injured on July 7, 2000 in their neighborhood when some teenagers fell on him. Appellant stated that she believed that the "accident" was deliberate and that it may have had something to do with her wearing a badge saying that she worked for the federal government. Appellant stated that she was injured herself on July 15, 2000 when three women attacked her because they were jealous of her government job.

By letter dated September 5, 2000, appellant was requested to submit medical evidence to support her claim. In response she submitted another form from Penn Care, this one signed by Dr. Jacque Curtis, a Board-certified internist, indicating that appellant was treated on September 8, 2000 for fatigue. Appellant also submitted a medical assessment form dated August 28, 2000 wherein Dr. Lim indicated that she treated her for anxiety, depression and asthma and that appellant was temporarily incapacitated.

By decision dated October 19, 2000, the Office denied appellant's claim. The Office stated that, although the evidence supported that appellant actually experienced the claimed event, the evidence did not establish that a condition had been diagnosed in connection with this.

The Board finds that appellant has not established that she was injured while in the performance of duty.

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. It is not sufficient under general principles of workers' compensation law to predicate liability merely upon the existence of an employee-employer relationship.<sup>1</sup> Congress has provided for the payment of compensation for disability or death 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 prerequisite in workers' compensation law of "arising out of and in the course of employment."<sup>2</sup> "In the course of employment," deals with the work setting, the locale, and the time of injury, whereas "arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.<sup>3</sup> In the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment, or the risk is incidental to the employment or to the conditions under which the employment is performed.<sup>4</sup>

In the instant case, appellant has met none of the criteria for establishing that she sustained an injury in the performance of duty. Appellant alleged that she was attacked by three individuals on July 15, 2000, and that, as a result thereof, she sustained a concussion. She stated that she did not know her attackers personally, but that one was the daughter of a next door neighbor and that the others were the daughter's friends. Appellant alleges that they were jealous of her federal job, and that they accused appellant of thinking a lot of herself because she had a government job. None of these women had anything to do with appellant's duties as a census taker; none of the women were respondents to the census data collection. Furthermore, appellant was not actually carrying out her federal duties at the time of her attack. Appellant also noted that her son was injured when at a basketball game, some teenagers who were high on drugs, fell on her son and gave him a concussion. Appellant alleged that she believed that this "accident" was deliberate, and that it might have had something to do with her wearing a badge that said she worked for the federal government. But she submitted no evidence to support this supposition. At the time of her son's injury, appellant was not performing her duties nor was she at a place where she was assigned to perform her census taking duties. The Board further notes that any injuries sustained by appellant's son would not be relevant to her claim. Accordingly, appellant has not established that she was injured within the period of her employment, at a place

---

<sup>1</sup> *George A. Fenske*, 11 ECAB 471 (1960).

<sup>2</sup> *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Christine Lawrence*, 36 ECAB 422 (1985).

<sup>3</sup> *Larry J. Thomas*, 44 ECAB 721 (1990); *Christine Lawrence*, *supra* note 2.

<sup>4</sup> *Mary Beth Smith*, 47 ECAB 747 (1996).

where she may reasonably be expected to be with regard to her employment, or that she was in any way fulfilling her duties of employment or engaged in doing something incidental thereto at the time of her alleged injury.

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

Dated, Washington, DC  
June 5, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member