

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.O., Appellant )

and )

DEPARTMENT OF AGRICULTURE, )  
NATIONAL FINANCE CENTER, )  
New Orleans, LA, Employer )

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**Docket No. 09-217  
Issued: October 21, 2009**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument September 2, 2009

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 28, 2008 appellant filed a timely appeal from a July 30, 2008 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim. 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 established that she sustained a stress-related condition on June 11, 2008 in the performance of duty.

**FACTUAL HISTORY**

On June 12, 2008 appellant, then a 48-year-old financial management specialist, filed a traumatic injury claim alleging that on June 11, 2008 she sustained a migraine headache, stress, anxiety, back and neck spasms, nausea and nervousness in the performance of duty. She related that a coworker entered her cube while she worked, bumped into her and raised his voice. On

the claim form, appellant's supervisor maintained that she was not in the performance of duty at the time of the alleged injury as she and the other employee were discussing a church-related matter. On June 16, 2008 the employing establishment controverted the claim. Olga Jones-Walker, on behalf of the employing establishment, stated:

“On June 11, 2008 about 10:00 a.m. [Anthony Cefalu, Jr.] confronted [appellant] about a tragedy that happened to another employee they were both acquainted with. This was a personal matter that [he] went to her for help. Once he realized that she was taking things out of context, he apologized for bringing the matter to her.”

Ms. Jones-Walker related that appellant requested a claim form immediately after the incident and that she had previously filed claims due to interactions with employees.

On June 11, 2008 appellant related that Mr. Cefalu “violently” entered her cube and told her that he was angry because her former Pastor did not assist Mr. Joe. She asked him to leave but he did not. Appellant related that she did not know Mr. Cefalu at the time of the confrontation and stated:

“He kept talking loud telling me he was upset, saying what kind of church you go to that they don't help people with their needs. I again told him to leave. I spoke loudly enough to get someone's attention, but people just kind of just listened and didn't tell him to leave. Sherrell and Vanessa was right there but they did not help. I tried to call someone on the phone for him to speak with, in an effort for me to then leave my cube to get help, but he took the phone out of my hand, brushing me, standing over me, and hung up the phone and told me off saying he don't want to speak with an answering machine and continued to confront me about a church where I was previously affiliated and about the Pastor who he said did not help someone who works for Goodwill. This had nothing to do with me at all. I was in my cube, working at my desk, minding my own business.”

On June 11, 2008 appellant informed Kevin Camp that Mr. Cefalu confronted her in her work cubicle about something that had nothing to do with work. She asserted that he refused to leave after violently entering her cubicle, took the telephone from her hand, bumped into her, stood over her and hung it up.

In a statement dated June 11, 2008, Mr. Cefalu related that he went to talk with appellant about a friend who had lost his possessions in a fire. He stated, “What disturbed me is when I heard the church that he attended offered him no help, just prayer.” Mr. Cefalu believed that he and appellant could speak “as one minister to another.” He maintained that when he told her that he was disappointed she became “loud and very voiceful.”

In a statement dated June 11, 2008, Grace R. Reed, a supervisor, related that appellant and Mr. Cefalu came into her office around 10:05 a.m. and that appellant “stated she was upset by the way [Mr. Cefalu] came into her cube questioning her about another employee (Mr. Joe) who goes to the church she attended.” Mr. Cefalu apologized and appellant told him that “he

had no right to approach her with this matter because she did not know him and he had upset [her] very much.” At a meeting later that day she requested a claim form.

On June 12, 2008 Sherrell Hayes related that she took Mr. Cefalu to appellant’s work cubicle to speak with her on June 11, 2008.<sup>1</sup> Mr. Cefalu asked appellant about her church membership and she asked why he wanted to know in an “ugly manner.” She stated, “I heard [appellant] asking [Mr. Cefalu] would you like to speak to my [P]astor and beg[a]n dialing on the telephone claiming her [P]astor is on the other line, I observed [Mr. Cefalu] gently taking the [tele]phone from her....”

In a June 13, 2008 investigative report, C.W. Jackson, a security specialist, related that he asked Mr. Cefalu why he spoke with appellant and whether he had threatened her. Mr. Jackson related:

“Mr. Cefalu stated that he approached [appellant] because he thought she was a minister, like himself, and he ‘thought he could address an issue to her minister to minister.’ He indicated that she became upset, dialed a number and passed the [tele]phone to him. Mr. Cefalu indicated that he was listening to a recording, told [appellant] that he did not wish to speak to a recording, and passed the [tele]phone back to her. At this time, Mr. Cefalu stated that [appellant] became louder and indicated that she was going to address this matter to her supervisor, ... Grace Reed. He indicated that [he] repeatedly apologized to [appellant] for upsetting her and departed the area....”

On June 13, 2008 Mr. Camp related that on June 11, 2008 appellant told him that Mr. Cefalu, a man that she did not know, approached her about another employee and that she felt embarrassed and threatened.<sup>2</sup> She related that Mr. Cefalu “bumped into her and took the telephone out of her hand.”

By letter dated July 19, 2008, appellant asserted that she was in the performance of duty at the time of the June 11, 2008 incident with Mr. Cefalu as she was performing her duties at her desk. Appellant noted that she had a history of a closed-head injury and described prior work injuries.<sup>3</sup>

By decision dated July 30, 2008, the Office denied appellant’s claim, finding that she did not establish that the June 11, 2008 incident occurred in the performance of duty. It found that the incident arose out of a personal matter between herself and Mr. Cefalu rather than her employment.

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<sup>1</sup> In a statement dated June 12, 2008, Joyce A. Ernest indicated that on June 11, 2008 she heard appellant shouting. On June 11, 2008 Keenan Langston heard appellant tell Mr. Cefalu to come with her to his supervisor’s office.

<sup>2</sup> On July 11, 2008 Ms. Hayes denied hearing Mr. Cefalu raise his voice or have any physical contact with appellant.

<sup>3</sup> A physician completed an authorization for examination and/or treatment, Form CA-16, on June 13, 2008. He diagnosed post-traumatic stress disorder due to a work trauma and found that she was totally disabled.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act<sup>4</sup> provides for payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase sustained 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.<sup>5</sup> In addressing this issue, the Board has stated that, 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.<sup>6</sup> This alone, however, is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of the employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.<sup>7</sup>

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

Larson states that 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 that would not otherwise be made, the employment becomes a contributing factor.<sup>9</sup>

The Board has held that this principle applies to mental or emotional injuries as well as to assaults.<sup>10</sup> As with assaults, when the subject matter of a verbal altercation is imported into the employment from a claimant's domestic or private life, and there is no indication that work

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>6</sup> *Lenneth W. Richard*, 49 ECAB 337 (1998); *Janet Hudson-Dailey*, 45 ECAB 435 (1994).

<sup>7</sup> *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985).

<sup>8</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</sup> A. Larson, *The Law of Workers' Compensation* § 8.00 (May 2004).

<sup>10</sup> *Monica M. Lenart*, 44 ECAB 772, 774 n.5 (1993).

contributed to or facilitated the dispute, the dispute is not a compensable factor of employment and any injury resulting therefrom does not arise out of employment.<sup>11</sup>

### ANALYSIS

Appellant alleged that she sustained a stress-related condition on June 11, 2008 in the performance of duty. She maintained that Mr. Cefalu violently entered her work area and questioned her in a loud voice about actions taken by her church Pastor. When Mr. Cefalu refused to leave she handed him the telephone in an attempt to get around him and leave her cube. Appellant indicated that she did not know Mr. Cefalu by name and that she was working at the time of the confrontation. In a statement dated June 11, 2008, Mr. Cefalu related that he wanted to speak with appellant about a friend who had lost his possession in a fire. He informed her that he was disappointed that her church did not offer the friend financial assistance.

There is no dispute that on June 11, 2008 Mr. Cefalu entered appellant's work cube and confronted her about actions taken by her Pastor. At the time, appellant was at her desk performing her work duties. The Office denied the claim on the grounds that the subject matter of the incident on June 11, 2008 concerned a nonemployment-related matter. The Board finds, however, that the altercation arose in the performance of duty. The Board has recognized that friction and strain among employees may arise as an inherent part of the conditions of employment. Even if the subject of a dispute is unrelated to work, an altercation is compensable if the work of the participants brought them together and created the relations and conditions that created the clash.<sup>12</sup> The point is illustrated by the case of *Shirley I. Griffin*,<sup>13</sup> where an altercation arose out of the claimant's failure to introduce a male employee to her coworker, who had asked about meeting the employee. Reversing the Office's finding that the employment contributed nothing to the episode, the Board found that work proximity was the sole connection between the claimant and her coworker. Although the conflict involved a nonwork topic, the Board held that the altercation was compensable because the employment brought the claimant and her coworker together and created the conditions that resulted in the altercation. That the lack of introduction was not relevant to the work, the Board explained, did not disconnect it from the employment nor from the injurious consequences of the altercation.

The altercation between appellant and Mr. Cefalu occurred on the work premises. Both appellant and Mr. Cefalu confirmed that they had no prior relationship with one another outside the workplace. Work brought the two together and created the conditions that resulted in the altercation; therefore, the incident occurred in the performance of duty.<sup>14</sup> Consequently, the issue is whether the incident at work caused an injury. The Office did not adjudicate this aspect of the case as it found that the altercation between appellant and Mr. Cefalu did not occur in the performance of duty. The case will be remanded for the Office to consider whether the medical evidence establishes that she sustained an injury due to the June 11, 2008 altercation with

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<sup>11</sup> See *Edward Savage, Jr.*, 46 ECAB 346 (1994).

<sup>12</sup> See *M.A.*, 60 ECAB \_\_\_\_ (Docket No. 08-2510, issued July 16, 2009).

<sup>13</sup> 43 ECAB 573 (1992).

<sup>14</sup> *Id.*

Mr. Cefalu. Following such further development as is deemed necessary, the Office shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 30, 2008 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 21, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board