

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 10-1255
Issued: January 5, 2011**

Appearances:

*Patricia Ring Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2010 appellant filed a timely appeal from a March 19, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act and 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 met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On February 3, 2010 appellant, then a 32-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 8, 2009 she was assaulted and punched in the face by a coworker, which caused migraine headaches, severe depression and scratches and bruises to her right arm. She stopped work on October 8, 2009. On the reverse side of the form, appellant's supervisor indicated by check marks that appellant was injured in the performance of

duty and that the injury was not caused by a third party. Her supervisor further reported that his knowledge of the facts of her injury agree with statements of her and/or witnesses and advised that the employing establishment did not controvert continuation of pay.

In a December 30, 2009 medical note, Dr. Dida Ganjoo, a treating physician, reported that appellant was first treated in her office on December 11, 2009 and diagnosed her with severe depression, panic attacks, post-traumatic stress disorder and migraine headaches. She further noted that appellant was incapacitated and unable to return to work until further notice.

By letter dated February 16, 2010, the Office requested additional factual information from both appellant and the employing establishment, including details regarding her employment history with relevant names, addresses, telephone numbers, dates and locations, exposure to stress, medical records of prior emotional conditions and a copy of the police report from the October 8, 2009 incident. Neither appellant nor the employing establishment responded to the Office's request for information.

By decision dated March 19, 2010, the Office denied appellant's claim because she did not establish that she sustained an injury and specifically failed to establish that the event occurred as alleged.¹

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

Appellant alleges a traumatic injury arising out of an altercation or assault. To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.⁶

¹ Following the Office's March 19, 2010 decision, appellant submitted additional evidence to the Office. As this evidence was not before the Office at the time of its final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 510.2(c)(1).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *Paul Foster*, 56 ECAB 1943 (2004).

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and with her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on an employee's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸ Larson, in addressing assaults, notes that, when it is clear that the origin of the assault is purely private and personal and the employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault should be held noncompensable. An assault, to be compensable, must either arise in the course of employment or if it does not, must be directed at the employee because of his employment.⁹ Generally, the Board has held that personal disputes between coworkers are not compensable if they arise outside the scope of employment.¹⁰

ANALYSIS

The Board finds that appellant failed to establish that she sustained an injury while in the performance of duty on October 8, 2009.

Appellant must establish all of the elements of her claim in order to prevail. Before the medical evidence submitted can be considered, she must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. The evidence received prior to the March 19, 2009 decision does not provide any detail regarding appellant's altercation with a coworker. Appellant submitted a CA-1 form which simply recounted the incident as alleged by her and was signed off by her supervisor. Though she has alleged with specificity the time and place of the incident and there is no evidence to the contrary, she has not provided the sufficient detail needed to establish that the altercation occurred in the manner alleged.

Appellant's CA-1 form alleges that she was assaulted and punched in the face by a coworker. She failed to adequately describe the circumstances of her injury and failed to provide evidence to substantiate her claim. Appellant did not describe the circumstances before and after the assault, whether any coworkers witnessed the alleged incident or where, specifically, the assault took place. She did not provide a copy of the October 8, 2009 police report, a detailed

⁷ *Id.*

⁸ *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

⁹ *Bruce Wright*, 43 ECAB 284 (1991).

¹⁰ *George A. Rodriguez*, 57 ECAB 224 (2005).

personal statement or any witness statements describing the assault.¹¹ Appellant has failed to submit sufficient evidence to establish that her claim was properly denied.¹²

Although appellant sought medical treatment on December 11, 2009 for the claimed physical affects of the alleged attack, she did not adequately explain why she delayed treatment for over two months and failed to file a claim until February 3, 2010. She submitted a December 30, 2009 medical report from Dr. Ganjoo, who diagnosed her with severe depression, panic attacks, post-traumatic stress disorder and migraine headaches. While Dr. Ganjoo's medical note provides a diagnosis, it does not support appellant's allegation that she was assaulted in the workplace. Therefore, her medical report is not relevant in establishing appellant's factual basis to support her claim.

On February 16, 2010 the Office informed appellant of the evidence needed to support her claim; however, the record before the Board contains no evidence. Evidence submitted by appellant after the final decision cannot be considered by the Board, although she may submit new evidence, along with a request for reconsideration directly to the Office. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its decision. On that record, appellant failed to provide evidence to prove the fact of injury, its time, place and manner and that the injury was causally related to her federal employment.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty.

¹¹ *Paul Foster, supra* note 6; *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹² The need for additional evidence also arises because the Board has no way of knowing the circumstances surrounding the alleged assault. The record before the Board does not reflect whether this altercation occurred over nonwork matters. Generally, the Board has held that personal disputes between coworkers that arise outside the scope of employment and are then imported into the workplace are not compensable. (*James P. Schilling*, 54 ECAB 914 (2003); *Agnes V. Blackwell*, 44 ECAB 200 (1992)). Thus, appellant must offer evidence to establish a causal connection between the altercation and her employment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 19, 2010 is affirmed.

Issued: January 5, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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