

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN S. GRAHAM WILBURN and DEPARTMENT OF THE
TREASURY, INTERNAL REVENUE SERVICE, Oklahoma City, Okla.

*Docket No. 97-573; Submitted on the Record;
Issued April 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition arising in the course of her federal employment.

Appellant, an employee development specialist, alleged that she sustained an emotional condition on April 19, 1995, resulting from the bombing of the Murrah Federal Building and the death of her grandsons. Appellant explained that she was working at her desk in her office located some four blocks from the Murrah Federal Building when she heard the blast at approximately 9:00 a.m. on April 19, 1995. Appellant stated that she left her office to find her daughter, who was employed in the same building, as she believed that a natural gas explosion had occurred. Upon locating her daughter, appellant stated that she was told by a coemployee that the bank building had been bombed. Together with her daughter, appellant exited the building to ascertain what had occurred. Out on the street, appellant learned that the bank building had not been bombed. Appellant stated she looked over toward the Murrah Federal Building and saw smoke "and I said, Edye, the babies." Appellant's grandsons were in the day-care center in the Murrah Federal Building, which was in the direction from which smoke was rising. Appellant stated that she ran towards the Murrah Federal Building, with glass windows still falling around her. Upon reaching the Murrah site, appellant tried to enter the building because her grandchildren, coworkers and people that she knew were in the building. Appellant stated that she wanted to try to assist in an obvious emergency; however, she was denied access to the building by an Alcohol Tobacco and Firearms (ATF) agent. Appellant recounted that she was told that the children from the Murrah day-care center had been taken to the Y center. She then left the Murrah site to look for her grandchildren at the Y center. Later that day appellant learned that her grandchildren had not survived. Appellant testified that her work required that she coordinate training programs with federal agencies in the Murrah Federal Building. Therefore, appellant knew 29 individuals either through work or the day-care center who did not survive the bombing.

Appellant submitted medical evidence from Dr. Wesley D. Heinz diagnosing her with post-traumatic stress disorder. Dr. Heinz testified that appellant would have suffered this disorder, even without the death of her grandsons, due solely to viewing the events of April 19, 1995 and the deaths of other individuals she had known and worked with.

The Office of Workers' Compensation Programs denied appellant's claim by decisions dated October 26, 1995 and August 22, 1996 on the grounds that appellant's emotional condition was not sustained while in the performance of duty.

The Board has duly reviewed the case record and finds that appellant's emotional condition did not arise in the performance of her federal employment duties.

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against 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.¹ Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.²

In *Lillian Cutler*,³ the Board explained that, where an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out such duties, and the medical evidence establishes that the disability resulted from her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment, and would therefore come within the coverage of the Federal Employees' Compensation Act. The Board stated in *Pauline Phillips*,⁴ that this is true where the employee's disability resulted from her emotional reaction to her regular day-to-day or specially-assigned work duties or to a requirement imposed by the employment.⁵

The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." "In the course of employment" deals with the work setting, the locale and 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.⁶ 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

¹ *Christine Lawrence*, 36 ECB 422 (1985); *Minnie M. Huebner (Robert A. Huebner)*, 2 ECAB 20 (1948).

² *Denis F. Rafferty*, 16 ECAB 413 (1965).

³ 28 ECAB 125 (1976).

⁴ 36 ECAB 377 (1984).

⁵ *See also Manual W. Vetti*, 33 ECAB 750 (1982).

⁶ *Id.*

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.⁷

This test is similar to the positional risk doctrine discussed by *Larson*,⁸ in his treatise on workers' compensation law, which provides that "an injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where she was injured." As further discussed by *Larson*, this theory supports compensation in situations where the only connection of the employment with the injury is that the obligations placed the employee in the particular place at the particular time when she was injured by some neutral force, meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.

Applying this test, in *Larry J. Thomas*,⁹ wherein a letter carrier came upon the body of a suicide victim while delivering his route, the Board found that this incident did occur at a time when claimant was engaged in his employer's business, at a place where he could reasonably be expected to be, and while he was fulfilling the duties of his employment. Thus the Board reasoned that, while claimant's injury in *Thomas* may have been caused by a neutral force, since his employment placed him in the place of injury, his injury was covered under the Act. In the present case, however, unlike the claimant in *Thomas*, appellant left the place of her employment and her employment duties and did not sustain her injury while engaged in her employer's business, or while fulfilling the duties of her employment.

In a factually similar case, *Carla E. Phillips*,¹⁰ a postal employee alleged that she sustained an emotional condition after learning that her spouse, also a postal employee, had been shot to death during his employment. The Board noted that appellant's emotional condition was not compensable as it resulted from her reaction to knowledge of the shootings and to the subsequent revelation that her spouse was among the dead, rather than to the performance of her day-to-day duties, specially-assigned duties, or any other requirement imposed by her employment duties. Similarly, in the present case it is clear that appellant's emotional condition arose from the knowledge that her grandsons, co-workers and acquaintances had died, rather than from the performance of her day-to-day duties, specially-assigned duties, or any other requirement imposed by her employment. The fact that an employee learns of a tragedy and sustains an emotional condition during working hours does not, in and of itself, provide the necessary nexus to establish that the emotional condition occurred while in the performance of duty, as required by the Act.¹¹

⁷ *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

⁸ 1 A. Larson, *The Law of Workers' Compensation* § 6.50 (rev. 1993).

⁹ *Larry J. Thomas*, 44 ECAB 291 (1992).

¹⁰ 39 ECAB 1040 (1988).

¹¹ 5 U.S.C. § 8102.

Finally, appellant contends that appellant engaged in an attempt to aid in the rescue of coemployees and that coverage should be extended under the “emergency situation theory,” consistent with the principles set forth in *Larson*.¹² *Larson*, in his treatise, explains that under familiar doctrines in the law relating to emergencies, generally, the scope of an employee’s employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest. In the present case, appellant testified that she attempted to enter the rubble of the Murrah building to assist in an obvious emergency. Appellant has stated that she was turned away and that she was not able to enter the building. While it is indisputable that emergency circumstances existed at the Murrah Federal Building on the morning of April 19, 1995 and that appellant was present at this site, appellant did not perform an act of aid or rescue because of this emergency. There is no evidence of record that appellant actually performed any acts designed to save a life or property, the performance of which resulted in her emotional condition. Rather, the evidence of record again establishes that appellant’s emotional condition arose from the knowledge of the deaths of her grandchildren, deaths of other individuals, and from the knowledge of the devastation as a whole of the Murrah Federal Building.

In the case *Janet Kidd (James Kidd)*,¹³ wherein the employee was shot while allegedly saving his son, the Board found that there was no evidence to support that the employee’s action, in saving his son, was to serve the purpose of the employer, rather than constituting the spontaneous action of a father. The evidence of record in the present case establishes that upon hearing of the blast, appellant acted spontaneously in leaving her work site and running towards the Murrah building when she realized that her grandsons’ child care center was located near the site of the rising smoke. There is no evidence of record that appellant actually engaged in a rescue action, of benefit to her employer, that led to her emotional condition.

As appellant’s emotional condition did not occur on April 19, 1995 as the result of the performance of her federal employment, the Office properly denied her claim for workers’ compensation benefits.

¹² 1A A. Larson, *The Law of Workers’ Compensation* § 28.00 (1996).

¹³ 47 ECAB _____ (Docket No. 95-1977, issued July 17, 1996.)

The decisions of the Office of Workers' Compensation Programs dated August 22, 1996 and October 26, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 8, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member