

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of EDYE ANN SMITH and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Oklahoma City, Okla.

*Docket No. 97-574; 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.

In the present case, appellant, a secretary, filed a claim alleging that she sustained a post-traumatic stress disorder on April 19, 1995 as a result of the bombing of the Murrah Federal Building and the death of her children. Appellant explained that, on the morning of April 19, 1995, she heard a blast and was told by a coemployee that a bank building had been bombed. Appellant stated that her mother, who was employed in the same building, came down to her office and together they left the building to see if "there was something we could do..." Upon viewing the smoke coming from the direction of the Murrah Federal Building, appellant's mother stated "Oh, my God, the babies." Appellant's two young sons attended a child care center located in the Murrah Federal Building. Appellant and her mother began to run towards the Murrah Federal Building, the site of the children's day care center. Appellant stated that she ran towards the Murrah Federal Building with the intention of assisting; however, once arriving at the Murrah Federal Building access was denied. Appellant testified that she fought with a police officer, but he would not let her enter the building. Appellant was told that the children from the Murrah child care center had been taken to a Y center across the street. Appellant then left the Murrah site to search for her children at the Y center. Later that day appellant learned that her children had not survived. Testimony of record establishes that appellant worked in the area of property management and therefore she coordinated property requirements with other federal employees in agencies located at the Murrah Federal Building.

Appellant has submitted medical evidence from Dr. Wesley D. Heinz that she has been diagnosed with post-traumatic stress disorder. Dr. Heinz has testified that appellant would have suffered this disorder, even without the death of her sons, due solely to viewing of 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 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.<sup>1</sup> 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.<sup>2</sup>

In *Lillian Cutler*,<sup>3</sup> 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.<sup>4</sup> The Board stated in *Pauline Phillips*,<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</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

---

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

<sup>2</sup> *Denis F. Rafferty*, 16 ECAB 413 (1965).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> 36 ECAB 377 (1984).

<sup>6</sup> *See also Manual W. Vetti*, 33 ECAB 750 (1982).

<sup>7</sup> *Id.*

she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.<sup>8</sup>

This test is similar to the positional risk doctrine discussed by *Larson*,<sup>9</sup> 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*,<sup>10</sup> 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 compensable 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*,<sup>11</sup> 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 sons, and acquaintances at the federal building 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, no matter how horrific, 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.<sup>12</sup>

Finally, appellant contends that she engaged in an attempt to aid in the rescue of individuals in the federal building and that coverage should be extended under the "emergency

---

<sup>8</sup> *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

<sup>9</sup> 1 A. Larson, *The Law of Workers' Compensation* § 6.50 (rev. 1993).

<sup>10</sup> *Larry J. Thomas*, 44 ECAB 291 (1992).

<sup>11</sup> 39 ECAB 1040 (1988).

<sup>12</sup> 5 U.S.C. § 8102.

situation theory,” consistent with the principles set forth in *Larson*.<sup>13</sup> *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 Murrah Federal Building to assist. Appellant has stated that she fought with a policeman to enter the building, but was turned away from the building and was not able to enter. 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 the site, appellant did not engage in any acts of emergency aid or rescue. Appellant testified that she fought with a policeman to enter the building, but was denied access. 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. The evidence of record again establishes that appellant’s emotional condition arose from the knowledge of the deaths of her children, 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)*,<sup>14</sup> 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 with her mother toward the Murrah Federal Building when she realized that her sons’ 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.

---

<sup>13</sup> 1A *Larson, The Law of Workers’ Compensation* § 28.00 (1996).

<sup>14</sup> 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