

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REBECCA L. WEST and DEPARTMENT OF THE ARMY,  
MILITARY TRAFFIC MANAGEMENT COMMAND, Bayonne, N.J.

*Docket No. 97-2689; Submitted on the Record;  
Issued June 23, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

The Board finds that appellant's injuries were not sustained in the performance of duty.

On February 25, 1997 at 2:15 p.m. appellant, while on duty at her assigned work location, was assaulted and stabbed eight times by a nonemployee male with a knife, with whom she had had an outside acquaintance and personal relationship over several years. The employing establishment controverted appellant's claim noting that, after speaking with a coworker and appellant's supervisor, the stabbing appeared to have been brought about due to personal reasons and noting that the assailant had called appellant several times during the morning preceding the attack and had spoken with others in the office who answered her telephone. Appellant, in her own statement admitted to knowing her assailant, Floyd Jacobs, admitted to having asked him not to come to her office and admitted to attempting to escort him out when he assaulted and stabbed her.

By decision dated July 18, 1997, the Office of Workers' Compensation Programs rejected appellant's claim finding that the attack did not occur in the performance of duty.

For an injury to be covered under the Federal Employees' Compensation Act, the evidence must demonstrate that it occurred in the performance of duty. "In the performance of duty" is interpreted to be the equivalent of "arising out of and in the course of employment." "In the course of employment" deals essentially with the work setting and more particularly, the locale, time and circumstances of the injury or event. "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; it must be related to the performance of day-to-day regular duties, to specially assigned duties, or to a requirement imposed by the employer.<sup>1</sup>

The facts of record in this case indicate that appellant's assailant was a person known to her, who had tried to contact her all morning and who had ignored her instructions not to come to the office and not a stranger and that the reasons for the attack were personal and did not relate to her assigned duties.

Assaults arise out of 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.<sup>2</sup> In this case there is no indication that appellant's work setting contributed to the situation or that the dispute regarded work issues. Further, the Board has held that when animosity or dispute which culminates in an assault is imported into the employment environment from a claimant's domestic or private life, the assault does not arise out of employment.<sup>3</sup> Therefore, as the evidence of record supports that the dispute which resulted in appellant's stabbing was imported into the workplace from her private life, her consequential injuries did not arise from the performance of duty.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 18, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 23, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>1</sup> See 5 U.S.C. § 8102(a); *Charles Crawford*, 40 ECAB 474 (1989).

<sup>2</sup> See *Agnes V. Blackwell*, 44 ECAB 200 (1992); *Sylvester Blaze*, 37 ECAB 851 (1986) (assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would not otherwise be made, the employment becomes a contributing factor).

<sup>3</sup> *Id.*