

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA LAWRENCE and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 97-1423; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained an injury on February 10, 1996 in the performance of duty; and (2) whether appellant has established that she sustained an injury on May 15, 1996 in the performance of duty.

The Board finds that the injuries sustained by appellant on February 10, 1996 were not sustained in the performance of duty.

On February 10, 1996 between 3:30 p.m. and 3:45 p.m. appellant, while on duty at her assigned work location, was assaulted by a nonemployee female, with whom she had an outside acquaintance. In the process of defending herself, appellant sustained a fractured finger and later diagnosed a dislocated jaw. The employing establishment controverted appellant's claim noting that the assault appeared to have been brought about due to personal reasons. Appellant, in a subsequent statement, admitted to knowing her assailant, Deshone English, and appellant's supervisor confirmed that appellant had known Ms. English prior to the date of the assault and had a conversation with her in the parking lot prior to the assault.

On May 17, 1996 appellant alleged that on May 15, 1996 while lifting a parcel "the pain traveled from my wrist up to my right middle finger." In support of her claim, she submitted a May 16, 1996 medical report, discussing her February 1996 injuries.

By decision dated May 22, 1996, the Office rejected appellant's claim finding that the attack did not occur in the performance of duty.

By an undated letter received by the Office on June 11, 1996, appellant objected to the denial of her claim. She stated that she was introduced to Ms. English by a coworker, Donna Dunlap, at a party the preceding August, and that evidently the assault occurred because Ms. English had some inaccurate information about appellant. Appellant stated that she knew Ms. English by what friends had told her about her, and that Ms. English had a history of being

an alcoholic, being abusive and needing psychiatric help. She stated that she was outside the employing establishment getting in her truck when Ms. English stopped her and began asking her questions, which appellant felt were inappropriate. Appellant stated that her supervisor, Mr. Walter, then came up to her and instructed her again to go get her truck. Appellant stated that she subsequently walked off after telling Ms. English to leave her alone, got into her truck and drove it inside. Thereafter appellant stated that as she was unloading parcels from the truck, Ms. English came in after her, struck her on both sides of her ears, grabbed her braids and dislocated her jaw, and that she fractured her finger defending herself.

By decision dated September 21, 1996, the Office denied appellant's May 15, 1996 injury claim finding that the evidence of record failed to establish that an injury was sustained as alleged. The Office found that the factual evidence was insufficient to establish that an incident occurred at the time, place and in the manner alleged, and that the medical evidence was insufficient to establish that an injury resulted.

By decision dated October 1, 1996, the Office denied modification of the May 22, 1996 decision finding that the injuries were not sustained in the performance of duty.

For an injury to be covered under the Federal Employee' 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 employment.¹

The facts of record in this case indicate that the appellant's assailant was a person known to her, who had previously conversed with her in the parking lot and who had ignored her instructions to leave her alone, 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.² 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.³ Therefore, as the evidence of record supports that the dispute which resulted in

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

² 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).

³ *Id.*

appellant's assault was imported into the workplace from her private life, her injuries did not arise from the performance of duty.

Therefore, the Office properly denied appellant's February 10, 1996 injury claim as it did not occur in the performance of duty.

The Board further finds that appellant has failed to establish that she sustained injury on May 15, 1996 in the performance of duty.

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.

Fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ This component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ In this case, however, appellant's statement of injury on her claim form was controverted by the employing establishment with the notation that this was a preexisting injury. Further, appellant's supervisor indicated that he was not notified of the alleged May 15, 1996 employment injury until June 7, 1996, almost three weeks after its alleged occurrence and that on appellant's claim form she evidenced confusion about which finger was injured. A consistent history of the injury as reported on the notice of injury, to the claimant's supervisor and on the medical records can also be evidence of the occurrence of the incident. However, in this case appellant did not provide a consistent history of injury on her form, to her supervisor, or to her physician. Appellant's original claim form contained contradictory evidence about which finger was involved, the authorization for medical attention completed on May 17, 1996 contained no history of injury, beyond a date, and no notation of job relatedness, appellant's supervisor denied being given any contemporaneous notice of injury and the May 16, 1996 report from appellant's treating physician, Dr. Kelly O'Malley, a Board-certified physical medicine specialist, contained no notation of a May 15, 1996 injury and attributed appellant's disability to her February 10, 1996 right fourth finger fracture.⁶

⁴ *John J. Carlone*, 41 ECAB 354 (1989). 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 his subsequent course of action. In determining whether a prima facie 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 sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953). For a further detailed discussion of the components of an appellant's burden of proof in establishing fact of injury see *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ Appellant's claim for fracture of her right finger was denied as it did not occur in the performance of duty.

The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence.⁷ To establish a causal relationship between the condition and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. As appellant failed to provide a consistent history of injury such that the occurrence of an injurious event or incident could not be established, the Board has no need to consider the causal relationship aspect of the medical evidence.

Therefore, appellant has failed to establish that she sustained a traumatic injury on May 15, 1996 in the performance of duty.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 1, September 21 and May 22, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 28, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ See *i.e.* Gary L. Fowler, 45 ECAB 365 (1994); John J. Carlone, *supra* note 4.