U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN G. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Reston, VA

Docket No. 99-1082; Submitted on the Record;
Issued December 19, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury in the performance of duty on January 17, 1997; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On January 23, 1997 appellant, then a 47-year-old carrier technician, filed a traumatic injury claim alleging that on January 17, 1997 he sustained injury to his left arm at work. He claimed that a prior injury to his left shoulder condition was aggravated when he was handcuffed while being arrested at work at 11:30 a.m.[1] At the time of his claim, appellant had been working in a limited-duty position which included casing mail.[2]

In a statement received by the Office in February 1997, appellant stated that on January 17, 1997 Judy O'Hara, a postal manager at the employing establishment, told him that he had to sign a limited-duty position or leave the employing establishment premises.[3] He asserted that on January 6, 1997 he had accepted a limited-duty job, which had been made by his work unit supervisor, Donna Bradley. Appellant indicated that, while he "was trying to

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[1] The Office accepted that appellant sustained a partial left rotator cuff tear and left shoulder subluxation due to an employment injury on November 14, 1995.

[2] By letter dated January 29, 1997, the employing establishment advised appellant that he would be suspended from his job for 14 days beginning March 3, 1997 due to "improper conduct" and "blatant failure to follow instructions" on January 17, 1997. The letter cited a portion of the Employees' and Labor Relations Manual which provides that an employee who questions a superior's order should nevertheless carry out the order and then protest or appeal the action. The suspension was later reduced to a seven-day "working suspension."

[3] Appellant stated that on January 17, 1997 he clocked in at his regular starting time of 7:30 a.m., that he was performing the duties of the position he held since January 6, 1997 and that no one advised him that he should not perform his regular duties.

understand this situation," Ms. O'Hara and Ms. Bradley called in officers from the Fairfax County Police who escorted him from the building with handcuffs in an uncomfortable position behind his back.[4] He noted that the officers agreed to place the handcuffs in front of him and later removed the handcuffs after informing him that they did not have jurisdiction over the matter. Appellant stated that he returned to his duty station and then two postal inspectors approached him and told him that, "if I did not accept the new assignment then I would be trespassing." He indicated that both men forced handcuffs on him behind his back; that he fell to the floor on his left shoulder; that he sustained a cut to his left hand and bruises to both hands; and that he experienced pain and discomfort for several hours, particularly in his left shoulder.

In an undated statement, Ms. O'Hara indicated that she gained approval to place a limited-duty employee in a new limited-duty position and that on January 16, 1997 she drafted a job description, which was within appellant's work restrictions.[5] She stated that she anticipated appellant would not like the hours of the new position and was advised by Fred Allen, an official in the employing establishment's compensation office, that, if appellant refused the offer, he would have to end his tour of duty and go home. Ms. O'Hara noted that on January 16, 1997 she offered the position to appellant but that he refused to accept it. She stated that she advised appellant he could refuse or accept the position and later file a grievance regarding the matter, but that, if he refused it, he would have to punch off the clock. Ms. O'Hara indicated that appellant told her that he would continue to perform his current position.

On January 17, 1997 Ms. O'Hara again offered the new limited-duty position to appellant and advised him that he would have to end his tour of duty and go home if he refused the position.[6] She noted that appellant again refused the position and she informed him several more times that he would have to punch off the clock and leave the employing establishment premises. Ms. O'Hara indicated that she advised appellant that she would have the police escort him from the premises if he did not end his tour of duty, but that appellant continued to insist that he return to his work. She noted that she called the timekeeper of the employing establishment to request that appellant's tour of duty end as of 10:00 a.m. and advised appellant that his tour of duty ended at 10:00 a.m.

Ms. O'Hara noted that officers from the Fairfax County Police were summoned to the employing establishment and that Ms. Bradley advised appellant he was on emergency off-duty status and gave him a direct order to leave the premises. She indicated that appellant refused to leave the premises and that at 10:30 a.m. the four officers handcuffed him and began to lead him away before determining that they did not have jurisdiction over the matter. Ms. O'Hara further explained that the postmaster of the employing establishment advised her to call the postal

[4] The record contains a Fairfax County Police report, dated January 17, 1997, in which an officer indicated that they arrived at the employing establishment at 10:09 a.m. and left at 11:31 a.m.

[5] The report was also signed by Ms. Bradley. The limited-duty position offered by employing establishment involved the performance of duties such as answering the telephone and filing documents and required less physical ability than the position which appellant had performed since January 6, 1997.

[6] Ms. O'Hara indicated that Mr. Allen advised her at about 9:30 a.m. that the limited-duty job being offered by the employing establishment had been approved by appellant's attending physician.

inspectors and that an official from the labor department of the employing establishment advised her again to direct appellant to leave the premises and take his identification card. She indicated that the postal inspectors removed appellant from the premises in handcuffs and advised her that he would be charged with resisting arrest.

On January 21, 1997 Ms. Bradley provided an account of the events on and about January 17, 1997. Ms. Bradley indicated that she told appellant several times to end his tour of duty and leave the employing establishment premises after he refused the light-duty position offered to him. She noted that she placed him in an emergency off-duty status as of 10:00 a.m. and then gave him a direct order to leave the premises.[7]

In a memorandum dated January 17, 1997, the postal inspectors who removed appellant from the employing establishment premises described the events of that date. They noted that Ms. O'Hara had indicated she had ordered appellant to end his workday at about 10:00 a.m. and leave the premises after he repeatedly refused to accept an offered limited-duty assignment.[8] The postal inspectors stated that they arrived at the premises at about 11:20 a.m. They noted that appellant refused their requests for him to leave the premises and told them that the only way they could make him leave was to arrest him. The postal inspectors indicated that appellant became combative as they arrested him, that they had to struggle to subdue him, and that he had to be helped to his feet after falling during the struggle. They noted that the arrest was completed at about 11:50 a.m. and that appellant was charged with impeding and interfering with the arrest.

In a letter dated March 5, 1997, Benjamin Carter, a supervisor of appellant, responded to the Office's request for further information regarding the events of January 17, 1997. Mr. Carter stated that appellant was not on the clock at the time of the alleged injury on January 17, 1997. He noted that Ms. O'Hara advised the timekeeper of the employing establishment to end appellant's tour of duty at 10:00 a.m. after he repeatedly refused to leave the premises. In a memorandum dated March 25, 1997, the Office documented a conference it held on that date with Mr. Carter, who stated that appellant was ordered to leave the employing establishment premises after he refused to sign his new work assignment which was within the restrictions imposed by a prior work injury. He noted that officers from the Fairfax County Police were called but it was determined that they did not have jurisdiction over the matter. Mr. Carter indicated that postal inspectors were called to remove appellant because he was considered to be trespassing due to his failure to sign the work assignment.

By decision dated April 15, 1997, the Office denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he sustained an injury in the performance of duty on January 17, 1997. The Office noted that appellant was off duty at the time of the alleged employment injury on January 17, 1997.

[7] The record contains a Fairfax County Police report, dated January 17, 1997, in which an officer indicated that Ms. Bradley advised him that appellant had been "off the clock since 9:00 a.m."

[8] The postal inspectors indicated that officers from the Fairfax County Police had arrived at the premises at about 10:15 a.m. and arrested appellant at about 10:30 a.m.

Appellant requested a hearing before an Office hearing representative in connection with the Office's April 15, 1997 decision. At the hearing held on December 18, 1997, he stated that he had accepted a limited-duty position on January 6, 1997 and was working in that position on January 17, 1997. Appellant indicated that, at about 9:30 a.m. on January 17, 1997, Ms. O'Hara demanded that he sign a new job offer without providing an explanation or a time period to make a decision. He stated that he had not clocked out prior to the two arrests on January 17, 1997, that he landed on his left shoulder during the second arrest and that he reinjured his left shoulder.[9] Appellant noted that Ms. O'Hara told him he would be trespassing if he did not sign the job offer and that he was also told he would be taken off the clock if he did not sign the job offer. He indicated that he was given a direct order to sign the new job offer or else be escorted from the premises, but that Ms. Bradley did not tell him that he had been placed on emergency off-duty status. Appellant stated that he later learned that there was a policy of allowing an employee five days to decide whether to accept a given job offer.

In a statement dated January 9, 1998, Ms. O'Hara noted that on January 16, 1997 she advised appellant that she had no intention of altering his schedule or duty station. She indicated that she informed appellant that his attending physician had approved the new job offer and that he would be required to accept or refuse the offer. Ms. O'Hara stated that on January 17, 1997 she directed the timekeeper of the employing establishment to end appellant's tour of duty as of 10:00 a.m. She indicated that appellant refused to leave the premises after being directed to do so by two postal managers, four police officers and two postal inspectors.

By decision dated February 24, 1998 and finalized February 26, 1998, the Office hearing representative affirmed the Office's April 15, 1997 decision. By decision dated May 27, 1998, the Office denied appellant's request for merit review.

The Board finds that appellant did not sustain an injury in the performance of duty on January 17, 1997.

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and 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 relation. 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.[10] The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." The phrase[11] "course of employment" is recognized as relating to the work

[9] In a statement dated February 8, 1998, appellant asserted that officers from the Fairfax County Police Department told him to "go back to work" after they did not have jurisdiction to hold him. He claimed that there was no medical documentation to support that he could perform the offered job.

[10] *See* 5 U.S.C. § 8102(a).

[11] *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

situation and more particularly, relating to elements of time, place and circumstance. In addressing this issue, the Board has stated the following:

> "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 she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[12]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[13]

There is no dispute in this case that, at the time of the incident at work on January 17, 1997, appellant was at a place where he reasonably was expected to be in connection with the employment, *i.e.*, on the employing establishment premises. The issue is whether the injury occurred at a time when appellant may reasonably be said to have been engaged in his master's business and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.

The record reveals that appellant's injury did not occur at a time when appellant may reasonably be said to have been engaged in his master's business or while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. Appellant claimed that he sustained reinjury to his left shoulder when he was arrested at work at 11:30 a.m. The record contains evidence which shows that appellant was arrested at about 11:50 a.m. by postal inspectors who had to subdue him due to his combative behavior and that appellant fell to the ground during the struggle. At the time of his arrest, appellant had been off-duty since about 10:00 a.m. The employing establishment had placed appellant on emergency off-duty status at 10:00 a.m. and at least two supervisors, Ms. O'Hara and Ms. Bradley, advised him of this fact and gave him direct orders to leave the employing establishment premises or be arrested for trespassing. Prior to placing appellant on emergency off-duty status, Ms. O'Hara and Ms. Bradley repeatedly advised appellant that he could refuse or accept the limited-duty position

[12] *Mary Keszler*, 38 ECAB 735, 739 (1987).

[13] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

which was being offered and later file a grievance regarding the matter, but that, if he refused it he would have to punch off the clock.[14] Appellant continued to refuse to leave the employing establishment despite the fact that he also was ordered to do so by four officers from the Fairfax County Police and two postal inspectors.[15]

Appellant was not reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto at the time of his second arrest between 11:30 and 11:50 a.m. on January 17, 1997. By the time that he was arrested between 11:30 and 11:50 a.m., appellant had spent more than an hour and a half repeatedly refusing direct orders to leave the employing establishment which were given by two supervisors, four police officers and two postal inspectors. Although the initial discussions appellant held with supervisors related to his acceptance of a limited-duty job offer, such a limited connection of the events of January 17, 1997 to appellant's work is not sufficient to bring his claimed injury within the performance of duty. There is no indication that appellant was handcuffed and arrested due to any actions directly related his employment. Appellant was not arrested because he refused the limited-duty position offered by the employing establishment, but rather because he repeatedly refused direct orders to leave the employing establishment premises and became combative with postal inspectors who were attempting to have him comply with these orders. There is no evidence that, at the time of his injury, appellant was engaged in any activity incidental to his employment or that his actions bore any relation to the fulfillment of his duties.[16]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[17] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously

[14] Ms. O'Hara and Bradley contacted several employing establishment officials to get approval to place appellant in emergency off-duty status and immediately contacted the timekeeper of the employing establishment to effectuate the action.

[15] It does not appear that appellant has claimed that he sustained injury when he was arrested by officers from the Fairfax County Police at about 10:30 a.m. Even if appellant's claim can be interpreted as a claim for injury due to that arrest, appellant was not on duty at that time given that he was placed on emergency off-duty status at 10:00 a.m. The officers from the Fairfax County Police ultimately released appellant because it was unclear whether they had jurisdiction over the matter.

[16] *See Clarence Williams, Jr.*, 43 ECAB 725 (1992). In *Clarence Williams, Jr.*, the employee was on the employing establishment premises when he advised the drivers of two vehicles to move the vehicles. Although this action caused police officers to approach the employee, he was not handcuffed and arrested due to actions related to any employment duty. Rather, the employee was arrested for being belligerent and resisting attempts to place him in the patrol vehicle.

[17] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

considered by the Office.[18] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.[19] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[20]

In a March 4, 1998 letter, appellant requested reconsideration of the Office's February 26, 1998 decision. In connection with this request, appellant submitted documents which he felt indicated that he was required to report injuries; he also submitted grievance forms which he felt established that the employing establishment improperly had him removed from the employing establishment. The fact that appellant may have been required to report injuries is not relevant to the main issue of the present case, *i.e.*, whether appellant has shown that he sustained an injury in the performance of duty on January 17, 1997. The other documents submitted by appellant, which do not contain any findings that the employing establishment committed any wrongdoing in connection with the January 17, 1997 incident, also are not relevant to the main issue of the present case. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[21]

In the present case, appellant has not established that the Office abused its discretion in its May 27, 1998 decision by denying his request for a review on the merits of its February 26, 1998 decision under section 8128(a) of the Act, because he has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

[18] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[19] 20 C.F.R. § 10.138(b)(2).

[20] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[21] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated May 27, 1998 and dated February 24, 1998 and finalized February 26, 1998 are affirmed.

Dated, Washington, DC
December 19, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member