

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANGEL R. GARCIA and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Bronx, NY

*Docket No. 99-453; Submitted on the Record;  
Issued November 2, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim on the grounds that he did not sustain an injury in the performance of duty on January 7, 1998 as alleged.

On January 8, 1998 appellant, then a 30-year-old registered nurse, filed a claim for compensation alleging that the previous day he hurt his lower back when he was pushed by two criminal detectives from the local police department who wanted to interrogate him. Appellant stopped work on January 8, 1998 and returned approximately three weeks later. He left the employing establishment on March 26, 1998 for reasons unrelated to the January 7, 1998 incident.

On January 8, 1998 appellant related the events which transpired on January 7, 1998. Appellant stated that he was ordered by his supervisor to report to the ninth floor of the employing establishment to talk with two criminal detectives from the local police department. Appellant stated that the reason for the visit was not to serve a warrant or arrest him. Appellant also stated that he told the detectives that if their visit was not for one of the purposes enumerated in the Veterans Administration policy that he had a personal lawyer and would not talk to them. Appellant asserted that he was pushed in the chair and sustained a back injury. Appellant further alleged that he filed a police brutality charge and requested an internal affairs investigation. Appellant submitted a statement from Jose F. Rosa, who agreed with appellant's version of events. Appellant also submitted medical documentation which indicated that he suffered a cervical and lumbar sprain as a result of the January 7, 1998 incident.

The employing establishment controverted appellant's claim asserting that appellant was not in the performance of duties at the time of the alleged incident. Statements from the detectives involved and the employing establishment's criminal investigator denied appellant's allegation that he was mishandled or abused as alleged.

In a decision dated March 18, 1998, the Office denied appellant's claim for compensation on the grounds that the claimed injury did not occur within the performance of duty. The Office determined that, although the alleged pushing incident occurred on federal property, appellant was not within the performance of duty as he was being questioned about a personal matter which had no connection with his federal employment.

In a decision dated October 14, 1998 and finalized on October 15, 1998, an Office hearing representative affirmed the prior decision. The Office hearing representative found that the interrogation of appellant on January 7, 1998 was not incidental to his employment and, thus, any injury sustained by appellant during such interrogation was not sustained in the performance of duty. The Office hearing representative further found that the employing establishment followed its own policy 00-190 in allowing the criminal detectives from the local police department to enter the establishment and to speak with appellant regarding his possible involvement in outside criminal activity and that such a policy did not transfer an activity, which is clearly personal in nature, into employment-related activity.

The Board finds that the Office improperly determined that appellant was not within the performance of duty on January 7, 1998.

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not attach merely upon the existence of an employee/employer relation.<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. 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 the time of injury whereas "arising out of employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.<sup>2</sup> In addressing the issue, the Board stated:

"In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in [his] master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of [his] employment or engaged in something incidental thereto."<sup>3</sup>

In this case, appellant was ordered by his supervisor to report to a specific room at the employing establishment to be interviewed by the local police in accordance with the employing

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

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

<sup>3</sup> *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

establishment's policy toward accommodating local police personnel. The subject of the interview, whether it was to serve a subpoena or warrant or to interview for criminal activity, is not dispositive. Nor does the fact that the employing establishment properly followed its internal policy toward accommodating local police personnel control the outcome of this case. The controlling factor is that appellant was given a direct order from his supervisor to report to a specific room to be interviewed, despite his protestations. This directive was given during appellant's working hours while he was fulfilling the duties of his employment or engaged in something incidental thereto.<sup>4</sup> The record does not indicate that appellant was at liberty to disobey his supervisor's order. Inasmuch as appellant was required to follow his supervisor's order in reporting to the ninth floor of the employing establishment to talk with two criminal detectives, appellant was properly performing a duty incidental to his employment. Consequently, the decision of the Office rejecting appellant's claim on the grounds that he was not within the performance of duty must be reversed.

The decision of the Office of Workers' Compensation Programs dated October 14, 1998 and finalized on October 15, 1998 is hereby reversed and remanded for further development of the claim.

Dated, Washington, DC  
November 2, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> The record reveals that appellant was temporarily detailed to perform sedentary clerical work pending an administrative action.