

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA ALVEREZ and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, New Orleans, LA

*Docket No. 01-637; Submitted on the Record;  
Issued October 4, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty.

On January 9, 2000 appellant, then a 46-year-old distribution clerk, was slapped in the face and then struck on the right thigh by a television set that was thrown at her. She stopped working on January 12, 2000.

In a January 14, 2000 investigative report, a postal inspector stated that Fred Williams, a coworker of appellant, assaulted appellant on January 9, 2000 while she was manning the customer service desk at the employing establishment. The inspector stated that Mr. Williams came to the employing establishment while off duty to discuss the status of a personal relationship with appellant. He reported that a customer at the employing establishment saw Mr. Williams engage in a conversation with appellant and then slap her and throw or shove a portable television at her, hitting her on the leg.

Mr. Williams, in a written statement to the postal inspector, claimed that he had dated appellant for five years. Appellant, in her statement, denied any personal involvement with Mr. Williams and described him as a friend of the family. Mr. Williams indicated that he called at appellant's house on the morning of January 9, 2000 but was turned away when appellant indicated that she was trying to sleep. He related that after performing some personal errands, he called appellant at work and questioned her about her relationship with another person. Appellant responded that she could not talk as she was assisting a customer. Mr. Williams indicated that he came to the employing establishment to talk to appellant and asked her why she had not told him she was seeing someone else. He stated that appellant responded that it was none of his business. Mr. Williams claimed that, in response, he flicked a pen at appellant and walked away.

Appellant stated that, on the morning of January 9, 2000, Mr. Williams came to her house and began banging on her doors and windows, demanding that she open the door. She indicated that she called the police who she assumed took a report. That afternoon, appellant was helping a customer when Mr. Williams came into the employing establishment and asked to talk to her. She responded that she could not talk to him at the time. Appellant indicated that Mr. Williams

then became belligerent, cursing her and threatening her. She stated that she then felt something hit her right leg and saw the portable television set on the floor.

In a February 29, 2000 letter, in response to questions by the Office of Workers' Compensation Programs, appellant repeated her previous statement on her encounter with Mr. Williams on January 9, 2000. She again denied that she had been dating Mr. Williams for five years. She stated that she did not know why Mr. Williams had assaulted her. Appellant indicated that she was placed on leave with no pay after the incident. She reported that she was under psychiatric care and taking medication for the anxiety caused by the incident.

In a March 28, 2000 decision, the Office denied appellant's claim on the grounds that her injury did not occur in the performance of duty because it arose out of a personal dispute that was brought into the employing establishment.

Appellant requested a hearing before an Office hearing representative which was conducted on September 26, 2000. At the hearing, appellant stated that she had waited on Mr. Williams as a customer in the past and therefore, when he came to the employing establishment on January 9, 2000 she regarded him as a customer at the time of the assault. In a November 21, 2000 decision, finalized November 27, 2000, the Office hearing representative found that the January 9, 2000 incident arose from the dissolution of a personal relationship between appellant and Mr. Williams and therefore did not arise out of an activity related to appellant's work. He therefore affirmed the Office's March 28, 2000 decision.

The Board finds that appellant was not injured in the performance of duty.

The Federal Employees' Compensation Act provides for the payment of compensation for the "disability of death of an employee resulting from personal injury sustained while in the performance of duty."<sup>1</sup> 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."<sup>2</sup> Larson, in addressing assaults arising out of employment, states:

"Assaults arise out of the employment either if the risk of assault is increased because of the nature or the setting of the work, or if the reason for the assault was a quarrel having its origin in the work.... 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>

The Board has held that when animosity or a dispute, which culminates in an assault is imported to the employment from a claimant's domestic or private life, the assault does not arise out of the employment.<sup>4</sup> The evidence in this case shows that Mr. Williams went to appellant's house on the morning of January 9, 2000 to discuss, in some manner, appellant's relationship

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Mary Keszlar*, 38 ECAB 735 (1987); *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

<sup>3</sup> Larson, *The Law of Workers' Compensation* § 8.00 (2000).

<sup>4</sup> *Agnes V. Blackwell*, 44 ECAB 200 (1992); *George A. Fenske, Jr.*, 11 ECAB 471 (1960).

with another man. He left after appellant refused to let him into her house. Mr. Williams then came to the employing establishment where he knew he would find appellant, confronted her again about her relationship with another man, then slapped her and shoved a portable television set, which struck her on the leg. The cause of the assault arose from the personal relationship between Mr. Williams and appellant outside of work that was imported into the employing establishment.

The case is similar to that of *George A. Fenske, Jr.*<sup>5</sup> In that case, a woman who had been dating the employee became offended by the actions and suspected actions of the employee while on a date one night. Approximately one week later, she came to the employing establishment ostensibly to mail a package but, while the employee was waiting on her, threw a lye solution into his face. The Board held that the assault occurred only because of a personal relationship between the employee and the assailant outside of work and wholly apart from the employment. The Board pointed out that the only part the employment played in the assault was to place the employee at a location in a point in time where the assailant knew she could find him.

In the present case, the evidence shows that the assault arose from a personal relationship between appellant and Mr. Williams and involved the employing establishment only because Mr. Williams knew he would find appellant at that location at that point in time. This conclusion is strengthened by the fact that Mr. Williams attempted to confront appellant earlier on the same day, but failed to because she refused to let him into her house. He therefore sought a confrontation with appellant at a location where and when he knew she would be outside her house. The assault on appellant therefore did not occur within the performance of duty even though it occurred on the premises of the employing establishment because it did not arise out of the employment.

The decisions of the Office of Workers' Compensation Programs dated November 21, 2000, finalized November 27, 2000 and March 28, 2000 are hereby affirmed.

Dated, Washington, DC  
October 4, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> *Fenske, supra* note 4.