

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUADALUPE P. AMERICANO and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Oakland, CA

*Docket No. 01-1076; Submitted on the Record;
Issued January 23, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained injuries to her face while in the performance of duty.

On August 14, 1999 appellant, then a 46-year-old supervisor, filed a traumatic injury claim alleging that on August 13, 1999 she was struck in the face by a female employee. According to appellant, she was waiting by the time clock in a crowded hallway and speaking with Ramon Foster when a woman named Vivian, (assailant), struck her "out of the blue."

Appellant submitted witness statements from various colleagues corroborating that assailant hit appellant and an August 13, 1999 notice from the employing establishment that appellant's alleged assailant had been placed on emergency suspension pending the investigation of the altercation. In an incident report by the employing establishment, the investigator reviewed numerous statements concerning the incident and had a conversation with appellant's assailant, who admitted striking appellant. She stated that she had a personal relationship with Mr. Foster and had made plans to go on vacation with him, but that on the first day of the proposed vacation, he temporarily postponed their plans and never contacted her. She stated that when she saw Mr. Foster and appellant talking about "home matters," she realized that his relationship with appellant was not "as she had been led to believe" and struck appellant with a single blow to the face.

Mr. Foster stated that he had had a relationship with appellant for six years, that he had also been involved in a relationship with assailant that had recently ended, that assailant blamed appellant for their relationship ending and that he believed that was why she struck her. Mr. Foster added that he was talking with appellant at the time clock when she was hit and that she did not know about his relationship with the assailant.

In another memorandum dated August 25, 1999, the investigator noted that appellant had no idea why she was hit, that the assailant initially refused to discuss the incident and that Mr. Foster thought he was the cause of the incident. Mr. Foster also stated that, although

appellant was not his fiancé as she alleged, he did sleep over at her house on his scheduled day off. He also admitted that he had a three-year relationship with the assailant that recently ended.

By decision dated October 4, 1999, the Office denied appellant's claim on the grounds that her injury was not sustained while in the performance of duty.

By letter dated October 26, 1999, appellant requested an oral hearing, which was held on February 29, 2000. Appellant submitted photographs of the area where the incident took place and of other areas at the workplace. Appellant contended that she was in the particular place at the particular time because she was required to attend a class for work, that she had absolutely no other contact with her assailant and that, had she not been at that place at that time, she would not have been injured.

In a decision dated April 24, 2000, finalized April 25, 2000, the hearing representative affirmed the earlier denial of benefits, finding that the reasons for the assault were purely personal and had nothing to do with the employment.

The Board finds that appellant did not sustain an injury in the performance of duty on August 13, 1999.

The Federal Employees' Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation law, namely, arising out of and in the course of employment."³ "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation.⁴

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8102.

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Veleria Minus*, 46 ECAB 799, 802 (1995).

⁴ *Id.*

The employee must also establish the concurrent requirement of an injury “arising out of the employment.” “Arising out of the employment” requires that a factor of employment caused the injury.⁵ Lawson, in addressing assaults arising out of employment, states the following:

“Assaults arise out of the 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.... 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....”⁶

The Board has held that when animosity or a dispute which culminates in an assault is imported into the employment from a claimant’s domestic or private life, the assault does not arise out of employment.⁷ In *Veleria Minus*,⁸ this Board held that a dispute which arose from personal matters with regard to the claimant and the assailant was not covered under the Act. In that case, the altercation arose out of a dispute between the family of claimant and the family of her alleged assailant which occurred the previous night. The Board noted that the evidence indicated that the altercation arose out of the claimant’s personal contacts with her assailant, for the reasons that were private and not having origin in the workplace.

In *Janet Hudsons-Dailey*,⁹ the altercation at the place of employment arose out of personal contacts, specifically a coworker’s allegations that appellant had a relationship with her boyfriend and had transmitted a venereal disease to him. While the claimant denied the allegations, she acknowledged that she had a friendship with this coworker outside of work. This coworker allegedly slapped appellant. In finding that the resulting injury did not arise in the performance of duty, the Board stated, “There is no indication that work contributed or facilitated the dispute which arose from personal reasons and which was imported into the workplace.” In *Agnes V. Blackwell*,¹⁰ the Board affirmed the denial of benefits because it found that the assault arose out of a prior personal relationship between the parties and was, therefore, not compensable.

However, in *Shirley I. Griffin*,¹¹ the Board found that the altercation arose in the performance of duty. In that case, a coworker assaulted the claimant when, while working at adjacent workstations, a male employee came into their work area and assailant told the claimant

⁵ *Janet Hudson-Dailey*, 45 ECAB 435 (1994); *Charles Crawford*, 40 ECAB 474 (1989) (the phrase “arising out of and in the course of employment” encompasses not only the concept that the injury occurred in the work setting but also the causal concept that the employment caused the injury).

⁶ A. Lawson, *The Law of Workers’ Compensation* § 8.00 (2000).

⁷ See *Veleria Minus*, *supra* note 3; *Janet Hudson-Dailey*, *supra* note 5.

⁸ 46 ECAB 799 (1995).

⁹ 45 ECAB 435 (1994).

¹⁰ 44 ECAB 200 (1992).

¹¹ 43 ECAB 573 (1992).

that she wanted to meet him. When appellant failed to introduce them, the coworker stood up, without verbal warning and grabbed the claimant from the left side of the neck.

The Board found that appellant established an injury in the performance of duty because the sole connection between appellant and her assailant was the work proximity between the two and that, although the assault involved a nonwork topic, appellant's employment necessitated daily contact with the assailant and the introduction dispute leading to the assault was merely the culmination of the daily work contact pressure.

In this case, the evidence of record indicates that the assault on appellant arose out of her personal relationship with Mr. Foster and Mr. Foster's personal relationship with assailant. There is no indication that work contributed to or facilitated the dispute which arose from personal reasons and which was imported into the workplace. The simple fact that a personal assault occurred at the workplace does not necessarily bring it under the coverage of the Act.

This case is distinguished from *Shirley I. Griffin* because in that case appellant and her assailant had no personal contact outside of the office. Here, although there does not appear to be any personal contact outside the office between appellant and her assailant, the incident which sparked the altercation related to the personal relationship of each of the parties outside of the office with Mr. Foster. Accordingly, the physical attack on appellant did not arise out of appellant's employment.

The April 25, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2002

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member