

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT T. ROMANS and DEPARTMENT OF THE AIR FORCE,
HANSCOM AIR FORCE BASE, Bedford, MA

*Docket No. 01-1900; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on December 9, 2000.

On December 26, 2000 appellant, then a 43-year-old utility systems operation foreman, filed a claim alleging that he sustained multiple injuries on December 9, 2000 when two members of the employing establishment police handcuffed him and “crashed” his head into the ground. He indicated that the injury occurred in the computer control room of the employing establishment.

In a later statement, appellant alleged that on December 9, 2000 he was stopped, for 15 to 25 minutes, by an employing establishment policeman on base about 350 yards from his work site.¹ Appellant asserted that, after he arrived at his work site, two “screaming” policemen entered and insisted that he go outside with them, but that he refused to do so. Appellant claimed that he obeyed an order to turn around and the policeman “violently” pulled his arms behind his back and handcuffed him. He asserted that, after he was bent backwards, he fell and his head “crashed” to the floor.² In a statement dated December 20, 2000, David Valeri, a coworker, indicated that on December 9, 2000 some policemen “came for [appellant] after a misunderstanding during a traffic stop for a headlight being out.” Mr. Valeri noted that, “after a verbal altercation,” the policemen placed handcuffs on appellant in order to perform a personal search. He indicated that, after appellant had been bent at the waist for a while during the search, the policemen attempted to lay him on the ground. Mr. Valeri noted that appellant’s legs gave way such that he fell forward and hit his head on the floor. In a statement dated December 27, 2000, Lawrence Morton, Jr., another coworker, provided a very similar account of the events of December 9, 2000.

¹ Appellant indicated that the policemen asked for his driver’s license, registration and insurance card.

² A medical report of December 15, 2000, includes a history of injury indicating that appellant was restrained by employing establishment police for a minor nonmoving traffic violation.

By decision dated February 20, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that his claimed injury on December 9, 2000 did not occur in the performance of duty. Following a request for reconsideration, by decision dated June 19, 2001, the Office affirmed its February 20, 2001 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on December 9, 2000.

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."⁴ The phrase "course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the 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 doing something incidental thereto. 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.⁵

Although appellant's injury did occur on the premises of the employing establishment during work hours, this alone is not sufficient to establish entitlement to compensation benefits.⁶ Appellant has not established that his injuries on December 9, 2000 arose out of his employment. His injury did not occur while he was engaged in the employing establishment's business or in the duties he was employed to perform. Instead, appellant was injured during an altercation with policemen.⁷ The record reveals that appellant was stopped by policemen as a result of a vehicular infraction and that his being handcuffed shortly thereafter occurred in connection with this traffic stop. The evidence of record indicates that the handcuffing of appellant resulted from his noncompliance with the policemen. Appellant acknowledged that he did not obey the orders of the policemen to step outside of his workplace.

³ 5 U.S.C. § 8102.

⁴ *Bernard D. Blum*, 1 ECAB 1, 2 (1947).

⁵ *See Eugene G. Chin*, 39 ECAB 598, 601-02 (1988).

⁶ *See George A. Fenske, Jr.*, 11 ECAB 471, 473 (1960).

⁷ *See Jeremiah Bowles*, 38 ECAB 652, 653-54 (1987) (finding that the employee claiming injury during an altercation with police did not adequately show how his involvement in the altercation related to his work).

Appellant did not adequately explain how his handcuffing on December 9, 2000 and the events leading up to the handcuffing, including the traffic stop and his confrontation with the policemen, related to his work duties or other requirements of his job. No employer benefit was derived by appellant's involvement in the altercation.⁸ There is no evidence to indicate that appellant was engaged in any activity incidental to his employment at the time he was handcuffed. The substantial evidence of record indicates that appellant was handcuffed because of actions that had no relation to the fulfillment of his employment duties.⁹ Hence, the injury did not occur as a result of the employment or of the conditions under which the employment was required to be performed. The injury did not occur in the performance of duty and is not compensable under the Act.

The June 19 and February 20, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Charles Crawford*, 40 ECAB 474, 477-78 (1989).

⁹ See *Clarence Williams, Jr.*, 43 ECAB 725, 729 (1992).