

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE K. MACHADO and U.S. POSTAL SERVICE,
EAST STOCKTON STATION, Stockton, CA

*Docket No. 03-1368; Submitted on the Record;
Issued July 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

On June 21, 2001 appellant, then a 44-year-old clerk, filed a claim for traumatic injury alleging that on June 16, 2001 while on duty at her assigned work location, her estranged husband entered the workplace and shot her in the right thigh and chest. The employing establishment controverted appellant's claim noting that there was no nexus between appellant's employment and her husband.

The evidence of record establishes that on June 16, 2001 appellant was informed by coworkers that her husband, against whom she had a restraining order, had brought her some breakfast and was waiting for her on the loading dock. When appellant went out to meet her husband, he had a fast-food bag under his arm. After a brief altercation regarding the whereabouts of a truck they owned, appellant's husband pulled a gun out of the fast-food bag. Appellant turned and ran, was shot in the leg, but was able to run back into the building and out the other side, yelling to warn her coworkers. Appellant's husband pursued her into the building, brandishing his weapon, where he encountered appellant's supervisor, Robert Busby. Appellant's husband then caught up with appellant in the parking lot, shot her in the chest and then shot himself.

By decision dated July 20, 2001, the Office of Workers' Compensation Programs rejected appellant's claim finding that the attack did not occur in the performance of duty. Following an oral hearing, held at appellant's request, in a decision dated April 30, 2002, an Office hearing representative affirmed the Office's denial of appellant's claim.

The Board finds that appellant's injuries were not sustained in the performance of duty.

For an injury to be covered under the Federal Employees' Compensation Act,¹ the evidence must demonstrate that it occurred in the performance of duty. "In the performance of duty" is interpreted to be the equivalent of "arising out of and in the course of employment." "In the course of employment" deals essentially with the work setting and more particularly, the locale, time and circumstances of the injury or event. "Arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury; it must be related to the performance of day-to-day regular duties, to specially assigned duties, or to a requirement imposed by the employer.²

The facts of record in this case indicate that appellant's assailant was her estranged husband, against whom she had a restraining order, and not a stranger and that the reasons for the attack were personal and did not relate to her assigned duties.

Assaults arise out of 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.³ In this case, at the hearing appellant asserted that a change in her schedule had exacerbated her estranged husband's enraged behavior, and that the employing establishment contributed to the severity of the attack by failing to provide adequate security and by alerting her husband as to her escape route during the pursuit. The Board finds, however, that there is no indication in the record that appellant's work setting contributed to the situation or that the dispute regarded work issues. In a narrative statement, Mr. Busby, appellant's supervisor, stated that on the morning of the shooting he was supervising the workroom floor when he heard gunfire close by and appellant yelling. He stated that he heard, but never saw, appellant, and ran with several others out the closest door, away from the sound of the gunshots. Mr. Busby explained that he felt at a disadvantage because he had never met appellant's husband and did not know what he looked like. While he was running, however, he turned and was confronted by her estranged husband, who was running toward him. Mr. Busby stated that the attacker yelled: "You messing with me" and pointed a gun at Mr. Busby's head, but he was able to escape to safety. Mr. Busby stated that at no time did he say anything to the gunman or indicate in any way which direction appellant had run.

The Board has held that when animosity or dispute which culminates in an assault is imported into the employment environment from a claimant's domestic or private life the assault does not arise out of employment.⁴ In this case, appellant testified that her estranged

¹ 5 U.S.C. §§ 8101-8193.

² See 5 U.S.C. § 8102(a); *George E. Franks*, 52 ECAB 474 (2001).

³ *Leslie C. Moore*, 52 ECAB 132 (2000) (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).

⁴ *Id.*

husband appeared at the employing establishment under the pretense of bringing her breakfast. She went out to meet him and after a brief conversation about their son, he became angry and accused her of having had their personal truck at someone else's house. He then pulled a gun out of the fast-food bag. The Board finds that the evidence of record establishes that the dispute which resulted in appellant's injury was imported into the workplace from her private life, and did not arise in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated April 30, 2002 is hereby affirmed.

Dated, Washington, DC
July 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member