

The employing establishment controverted the claim on the grounds that the altercation was precipitated by an affair the claimant was having with the girlfriend of the assailant and thus the incident did not arise while in the performance of duty.

In a July 1, 2004 investigative report, a postal inspector stated that Russ Meek reported that appellant had been physically assaulted while out on his route and that he was taken to an emergency room. Appellant was interviewed and related that “he had been punched on the right side of the face and knocked to the ground by” James Richard Conklin, the ex-boyfriend of a woman with whom he was currently involved. The woman was identified as Rachelle Marie Ramirez who was employed at a business on appellant’s mail route.

On June 21, 2004 Daniel Adame and Marco Morales, postal inspectors, interviewed appellant regarding the assault which occurred that day. Appellant related that he was approached by an unidentified male after completing his deliveries to 9800 Campo Road. This person got out of a truck and stated “You must be Decker.”¹ Appellant stated he was Decker. The individual “proceeded to punch him on the right side of the face one time which knocked him to the ground.” Appellant indicated that he was “aware of who assaulted him, probably the ex-boyfriend of a female he met on his route,” identified as Ms. Ramirez. Appellant stated that the prior evening “he received a [tele]phone call from Ramirez” and her boyfriend came on the telephone and threatened him.

Mr. Adame and Mr. Morales interviewed Ms. Ramirez regarding the assault on appellant on June 21, 2004. Ms. Ramirez stated that she and appellant met during his mail delivery at her office. The relationship between them developed from friendship to eating lunch together regularly, attending aerobic classes and subsequently a weekend together in Las Vegas. During this time Ms. Ramirez was dating Mr. Conklin who became aware of appellant’s affair with Ms. Ramirez and told her “that he was going to hurt [appellant].” Ms. Ramirez stated that Mr. Conklin had threatened to hurt appellant during a telephone conversation with appellant.

By decision dated August 10, 2004, the Office denied appellant’s claim on the grounds that the evidence established that his facial injuries did not arise in the course of his federal employment. The Office found that the “the altercation with the third party, Mr. Conklin, arose out of a private matter, your off-the-job relationship with Ms. Ramirez.”

LEGAL PRECEDENT

The Federal Employees’ Compensation Act² provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”³ 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

¹ Appellant’s middle name is Decker.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8102(a).

of “arising out of and in the course of employment.”⁴ 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.”⁵

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.⁶

ANALYSIS

The evidence establishes that Mr. Conklin, a boyfriend of Ms. Ramirez, the individual with whom appellant was currently involved, threatened appellant the night before he assaulted appellant. Both Ms. Ramirez and appellant stated in their interviews with Mr. Adame and Mr. Morales that Mr. Conklin, Ms. Ramirez’s boyfriend, threatened appellant on the telephone the night before the assault. Appellant related that on June 21, 2004 Mr. Conklin asked if he was Decker, appellant stated that he was and then Mr. Conklin assaulted him.

In the present case, the Board finds that the June 21, 2004 assault arose from a personal relationship between appellant and Ms. Ramirez and Mr. Conklin. It involved the employing establishment only because Mr. Conklin knew he would find appellant while on his mail route. This conclusion is strengthened by the fact that both appellant and Ms. Ramirez stated that they met because Ms. Ramirez’s office was on the mail route. Mr. Conklin threatened appellant during a telephone conversation the night before. He sought a confrontation with appellant at a location where and when he knew appellant would be on his mail route. The assault on appellant did not occur within the performance of duty even though it occurred while on his assigned mail route. The dispute arose from personal reasons that were private and not having origin in the workplace. The incident sparking the altercation related to a personal relationship of each of the parties outside the Office with Ms. Ramirez.

CONCLUSION

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

⁴ *Mary J. Summers*, 55 ECAB ____ (Docket No. 04-704, issued September 29, 2004); *Mary Keszlar*, 38 ECAB 735 (1987); *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

⁵ A. Larson, *The Law of Workers’ Compensation* § 8.02 (2004); see also *Brenton A. Burbank*, 53 ECAB 279 (2002).

⁶ *Guadalupe P. Americano*, 53 ECAB 297 (2002); *Agnes V. Blackwell*, 44 ECAB 200 (1992); *George A. Fenske, Jr.*, 11 ECAB 471 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2004 is affirmed.

Issued: May 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member