



floor. Cynthia S. Freeman, a coworker, stated that she witnessed appellant being repeatedly struck about the face and body by a fellow employee on the elevator.<sup>1</sup>

The U.S. Postal Service Inspection Service conducted an investigation of the October 22, 2004 incident. In a November 2, 2004 report, Joseph L. Carcaci, a postal inspector, noted that interviews were held with various employees concerning the altercation. Michael Sinko reported that, while he was loading trucks with mail, he saw Mr. Hamlin punch appellant in the head. When Mr. Sinko yelled at Mr. Hamlin, he stopped hitting appellant and she backed away. Mr. Hamlin took the elevator back upstairs. Mr. Sinko did not see or hear anything between Mr. Hamlin and appellant prior to observing Mr. Hamlin striking her. Ms. Freeman reported that she had just returned from her lunch period when appellant told her that there was a bottle of water for her in elevator 14. She approached Mr. Hamlin, who was in the elevator and asked for the water bottle. Mr. Hamlin told her that it was his bottle of water. Ms. Freeman advised appellant what Mr. Hamlin had said, at which point appellant went over to the elevator to get the water bottle from Mr. Hamlin. She next saw appellant slide across the floor from elevator 14. Appellant got up and went back over to the elevator. Ms. Freeman then went to the elevator and saw appellant being held and repeatedly hit by Mr. Hamlin.

When interviewed by the inspection service, Mr. Hamlin stated that he was on elevator 14 at 2:00 a.m. when he transported a cafeteria employee on the elevator who gave him a bottle of water. While on the platform level, he was approached by Ms. Freeman who said the water bottle was for her. Mr. Hamlin told Ms. Freeman that the cafeteria worker had given the bottle of water to him. Thereafter, appellant approached him “hollering and screaming about the water being hers.” He indicated that appellant rushed towards him, grabbed the gate of the elevator and then grabbed his shirt and arm. Mr. Hamlin pushed appellant away and she fell. She got up and charged at him again. He acknowledged that he pushed or hit her to get her away from him. When he tried to leave, appellant continued to grab at the elevator door. Ms. Freeman pulled her away and he took the elevator upstairs to get mail. Mr. Hamlin advised that he had a relationship with appellant that ended several months prior and that she had been harassing him for several weeks. He attributed the altercation to their relationship and breakup.

Appellant advised the inspection service that on October 22, 2004 she was working as the relief elevator operator on elevator 13 for Ms. Freeman, who was the regular operator. She was moving mail and trash between the cafeteria and platform levels. At 2:00 a.m. Ms. Freeman returned from lunch and Mr. Hamlin had just transported a cafeteria worker down to the platform in elevator 14. This employee told appellant and Ms. Freeman that he had given Mr. Hamlin appellant’s bottle of water. Appellant requested that Ms. Freeman ask Mr. Hamlin for the bottle because she was busy moving trash. Ms. Freeman returned, stating that Mr. Hamlin said no and had not given her the bottle of water. Appellant then went to elevator 14 to get the bottle of water from Mr. Hamlin. She stated that she asked him for the bottle and he stated: “get the fuck out of here” and punched her in the face. Appellant advised that elevator 14 was open and that

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<sup>1</sup> Appellant sought an emergency protective order in the Court of Common Pleas, Philadelphia County, which was granted on October 24, 2004. Her petition for relief described her relationship with Mr. Hamlin as “ex-boyfriend.”

she did not say anything to provoke Mr. Hamlin nor had she touched him. She did not recall being pushed or hit onto the platform floor and then returning to the elevator.<sup>2</sup>

In a December 15, 2004 decision, the Office denied appellant's claim finding that the October 22, 2004 incident did not arise in the performance of duty. The Office found that her dispute with Mr. Hamlin did not pertain to work-related matters or have its origin in the workplace, noting that it was due to her prior personal relationship with her coworker.

On January 14, 2005 appellant requested a hearing and submitted additional medical evidence in support of the claim. Materials submitted to the record included those related to a December 17, 2004 notice of removal issued to appellant following the October 22, 2004 altercation and the arbitration of this disciplinary matter. In a June 27, 2005 decision, a mediator noted that on May 22, 2005 an arbitrator upheld a disciplinary action brought against Mr. Hamlin. The mediator found that the failure of the employing establishment to interview the cafeteria worker constituted a violation of appellant's due process and that the evidence before him did not support the assertion that she assaulted Mr. Hamlin at the time of the altercation or acted in a provocative manner. He advised that videotapes of the incident consisted of time-lapse pictures but did not show who started the altercation. However, the videotapes did reveal Mr. Hamlin striking appellant.

A hearing was held on November 30, 2005. Counsel contended that the assault arose in the performance of duty as appellant was merely trying to obtain a water bottle from Mr. Hamlin. Appellant acknowledged having a prior relationship with Mr. Hamlin, which ended sometime in 2003 after which she had no dealings with him. She noted that she returned to work at a different location on August 11, 2005 with restrictions on her physical activities.

In a May 8, 2006 decision, an Office hearing representative affirmed the December 15, 2004 decision. She found that the altercation arose from the personal relationship of appellant and Mr. Hamlin and not from her work duties or any requirement of her employment.<sup>3</sup>

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> 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."<sup>5</sup> "Arising in the course of employment"

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<sup>2</sup> Appellant received initial treatment at the employing establishment health clinic. A clinic nurse noted findings on examination, including slight swelling of the left side of the face with no open sores or wounds and no bleeding around the mouth, nose, eyes or ears. The nurse noted that she detected alcohol on appellant's breath. Appellant was also examined at a local emergency room where she was diagnosed with a jaw contusion.

<sup>3</sup> Counsel requested a copy of the videotape referenced in the postal inspector's report. The hearing representative noted that a copy was not provided to the record.

<sup>4</sup> 5 U.S.C. § 8102. See *Guadalupe P. Americano*, 53 ECAB 297 (2002); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>5</sup> *Id.* See also *Bernard D. Blum*, 1 ECAB 1 (1947).

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, however, is not sufficient to establishment entitlement to compensation.<sup>6</sup>

The employee must also establish the concurrent requirement of an injury "arising out of the employment." This requires that a factor of employment caused the injury.<sup>7</sup> Larson, 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...."<sup>8</sup>

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 in the performance of duty.<sup>9</sup> In *Agnes V. Blackwell*,<sup>10</sup> the employee sustained injury following an assault by a coworker with whom she had been romantically involved outside of work. The Board denied coverage under the Act, finding that the altercation arose out of a prior personal relationship between the employee and her coworker. The employee acknowledged that, during the prior year, she had slept with her coworker on a single occasion but had come to believe this a mistake as he was married. The Board found that the animosity which precipitated the assault was imported into the employment from the prior private relationship between the parties and not out of or in the course of their employment.

### ANALYSIS

The Board finds that appellant's injury on October 22, 2004 did not arise out of the course of her federal employment.

At the time of the assault, appellant was engaged in the performance of her duties as a maintenance clerk, working as the relief elevator operator on elevator 13 for Ms. Freeman. As noted, however, time, place and manner are not alone sufficient to establish entitlement to compensation. Appellant must also establish that her injury arose out of her employment or that

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<sup>6</sup> See *Lenneth W. Richard*, 49 ECAB 337 (1998); *Janet Hudson-Dailey*, 45 ECAB 435 (1994).

<sup>7</sup> *Guadalupe P. Americano*, supra note 4; *Charles Crawford*, 40 ECAB 474 (1989). See also *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph Barenkamp)*, 5 ECAB 228 (1952).

<sup>8</sup> A. Larson, *The Law of Workers' Compensation* Chapter 8 (2006).

<sup>9</sup> See *Veleria Minus*, 46 ECAB 799 (1995).

<sup>10</sup> 44 ECAB 200 (1992).

a factor of her employment gave rise to the assault. Before the Office and on appeal to the Board, counsel contends that this nexus is represented by “the quarrel over appellant’s water bottle.” He characterized her prior relationship with her assailant as merely coincidental. The Board does not agree.

The evidence of record does not establish that appellant’s employment contributed to or facilitated the assault of October 22, 2004. The increased risk of injury arose from a prior personal relationship with her coworker, which was imported into the workplace. Appellant’s injury did not arise from the type of work she was required to perform as a maintenance custodian. Rather, it was the result of personal animosity that arose out of her domestic and private life and prior relationship with her coworker, an estranged boyfriend.<sup>11</sup> The statements of Mr. Sinko and Ms. Freeman reflect that they did not hear or observe what happened between Mr. Hamlin and appellant prior to his striking her. Ms. Freeman noted that she approached Mr. Hamlin in elevator 14 for a water bottle and was told that it was his. When she advised appellant of this, appellant went to elevator 14. Ms. Freeman next saw appellant slide across the floor, get up and return to the elevator. When she went back to the elevator, Ms. Freeman observed appellant being struck by Mr. Hamlin.<sup>12</sup>

Mr. Hamlin advised the postal inspectors that he was approached by appellant, who grabbed at his shirt and arm. The evidence establishes that he either pushed her or struck her and she fell to the floor. Appellant then got up and returned to elevator 14. At this time, Ms. Freeman arrived and, as noted, observed appellant being struck by Mr. Hamlin. He apparently stopped after Mr. Sinko yelled at him and appellant backed away. Mr. Hamlin attributed the altercation to his prior relationship with appellant and their break up. Appellant’s statement described her work on the date of injury. She contended that she had not said or done anything to provoke Mr. Hamlin. Appellant did not recall being pushed or hit onto the platform floor or then returning to elevator 14, as described by Ms. Freeman and Mr. Hamlin. On appeal, counsel contends that the statement of Mr. Hamlin is not trustworthy or credible, as he was the aggressor with a dangerous propensity towards violence and whose removal from employment was ultimately upheld. However, there is nothing of record to cast doubt upon the credibility of any of the statements obtained by the postal inspectors. The only significant question is the motivation for the assault on appellant, a matter Mr. Hamlin clearly attributed to their prior relationship outside of work. Such animosity or quarrel did not have its origin in the workplace.

### CONCLUSION

The Board finds that appellant’s injury on October 22, 2004 did not arise out of the course of her federal employment.

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<sup>11</sup> “[I]t would be going too far to say that every assault arises out of the employment if it can be proved that the acquaintance of the parties came about through the employment. If the friction and strain arise not because of the enforced contacts resulting from the duties of the employment, but rather because the two employees, who met each other on the job, choose to enter into a purely private relationship just as they might if they had met elsewhere and if in the course of the ups and downs of that private relationship a private quarrel develops, the quarrel may well be treated the same as a domestic quarrel brought to the employment.” A. Larson, *supra* note 8 at § 8.02[2].

<sup>12</sup> Ms. Freeman’s account of the assault does not support appellant’s subsequent assertion that she lost consciousness at the time of injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board