

Appellant explained, however, that the primary issue was the mental anguish she was suffering as a result of the July 16, 2007 incident.

A July 16, 2007 note from the employee health unit described mild tenderness to palpation of the forearms bilaterally but no edema or bruising. Appellant was later diagnosed with bilateral hand contusion, anxiety disorder and post-traumatic syndrome causing depression. An August 8, 2007 attending physician's form report indicated that the injury to appellant's forearms and her post-traumatic syndrome were caused by an employee grabbing her arms at work.

Appellant offered her account of what happened on July 16, 2007. She described a rude and disrespectful woman, a purported privacy officer named Barbara Murphree, cornering her in the hallway, barging into her office, aggressively insisting on searching her shoulder briefcase for certain compact discs (CDs) and not validating her identity. Appellant asked her to leave, but Ms. Murphree grabbed her by the arms in an attempt to take her shoulder briefcase and, when appellant resisted, the woman yelled. When a secretary arrived, Ms. Murphree pretended that appellant had hurt her. The Veterans Administration (VA) police arrived and asked Ms. Murphree to leave the office. When appellant tried to close the door, the woman stuck her hand in the door and sustained a minor finger injury. The VA police then yelled at appellant and began treating her like a criminal. Appellant did not understand why they showed kindness to Ms. Murphree, allowing her to be treated first at the employee health unit. She did not understand why the police escorted her and not Ms. Murphree to the Leavenworth VA Police Office. Appellant explained that all she was doing was safeguarding the information on the CDs and protecting her personal space and rights. She stated that she gave the CDs to the VA police chief "for further protection from loss, defacement and tampering: to ensure the security and confidentiality of individually identifiable information and to protect against any anticipated threats or hazards to the veterans' security and integrity."

Ms. Murphree, an actual privacy officer, gave a different account of what happened. She had received reports that radiology CDs were being burned for appellant with the text of reports. Ms. Murphree was to meet with appellant to discuss the matter and to gain possession of the CDs and, if needed, to go with appellant to her home. She stated that Dr. Muralidhara G. Rao, Chief of Radiation, introduced her to appellant. They shook hands and exchanged pleasantries. Because appellant was reading films at the time, Dr. Rao asked her to report to the conference room when she was finished. About 45 minutes later, Dr. Rao's secretary told Ms. Murphree that appellant was just seen leaving with her purse. About 30 minutes later, Ms. Murphree saw appellant returning to her office with her purse and another big bag. "I thought maybe she had the CDs in the bigger bag." She walked with appellant to her office and explained that she would like to talk with her for a moment, but appellant asked her to leave because she needed to make a telephone call. Appellant put the bag under her desk and kept repeating that she needed to make a call. "I had a strong [suspicion] with regard to the way she was pushing her bag away from me, the way she was acting nervous and from the time she finished reading films and the time she was supposed to meet me in the conference room -- I believe she left the campus to get the CDs and brought them back to the facility." Ms. Murphree stated that appellant, who was upset, pushed her into the doorway. She held onto the door jam and appellant tried to close the door on her. "I may have had a hold of her arm or something to hold on -- I can't remember." Ms. Murphree did not want to get pushed into the hallway because she believed appellant wanted

to be alone so she could unpack her bag. When the VA police arrived, they asked Ms. Murphree and Dr. Rao's secretary to leave appellant's office. Ms. Murphree thought one of the officers would stay with appellant. When that did not happen and appellant began to close the door, Ms. Murphree put her hand in the door so someone could stay with appellant. "And that's when she slammed the door on my pinky finger." Ms. Murphree explained her position to one of the officers and what she thought was in the bag.

Jeannie Idol, an administrative officer in Diagnostics, was the person who responded to Ms. Murphree's call for help. She stated:

"[Barbara Murphree] arrived in Leavenworth yesterday morning [July 16, 2007] representing the Information Security Officer who was on leave. She came to speak with [appellant] about some security concerns. It was discovered the latter part of last week, that [appellant] was having radiology staff burn CDs of patient studies for 'training purposes.' The concern was that she was taking the information off station. Dr. Rao introduced [appellant] to Barb Murphree and informed her that Barb needed to speak to her. She asked that Barb wait until she was finished with the study she was reading, and all agreed. In the meantime, [I] was headed down the hallway and saw [appellant] exiting through the stairwell with her purse. Not long after that she called the reception desk and asked the DRT to lock her reading room because she was in the canteen and had forgotten to do so. She was gone for more than 30 minutes and the ISO rep tried to call her on her cell phone, but received no answer. Upon learning that [appellant's] office was unlocked; Barb began to search her office. Sometime later [appellant] arrived carrying not only her purse but another big black bag. Barb followed [appellant] to her office to speak to her about the security issues. I heard [appellant] getting loud and then [I] heard Barb call for help. I went to see what was happening and [appellant] had Barb pinned between the door and the door jam, trying to push Barb out of her office. [Appellant] told me that she knew this was because of her EEO and wanted to call her lawyer. I assured her it had nothing to do with the EEO, this was necessary because of the possible security violation and all she needed to do was to answer the questions she was being asked. Barb told [appellant] that she could call her lawyer if she wanted to but she (Barb) could not leave the office and [appellant] could not take anything from the office. Barb kept telling [appellant] that she would not leave until she told her where the CDs were. She was irate that Barb had searched her office with her knowledge and also refused to answer any questions concerning the whereabouts of the CDs. [I] had another staff member phone the police while [I] was holding the door off of Barb since [appellant] continued to push it shut on her. She was still shouting and trying to shut the door when the officers arrived. They asked both of them to come out into the hall. Everyone but [appellant] did so. As they were leaving, [appellant] again shut her door on all of them catching one of Barb's fingers in the door. The officers then pushed the door open. They tried to get [appellant] to settle down while one of them looked at Barb's hand. They were leaving to take Barb to Employee Health to have her hand checked and [appellant] said they were also going to take her as she had been pushed by Barb and was also injured."

The investigating officer stated that when he and the other officers responded, they overheard two people arguing: “[Appellant] stated that Murphree pushed her and Murphree said that’s a lie, I didn’t push her.” One of the officers asked Ms. Murphree to step out of the office, but she stated she was not leaving unless [appellant] left. “After telling both individuals to step out of the office, Murphree complied. While exiting, [appellant] went to shut the door and Murphree stuck her hand between the door and the door jam preventing it from closing.” Two of the officers attempted to push the door open but could not because appellant had wedged her shoe at the bottom of the door. The officers got Ms. Murphree’s hand out of the door and managed to open the door. One of the officers wanted Ms. Murphree to go the emergency room, but she stated she was not leaving until she got the information she needed. At the officer’s insistence, she complied. Appellant stated that she had to go to the emergency room also because Ms. Murphree had grabbed hold of her arms. At the VA police station, the acting chief asked appellant if she had the CDs. Appellant said yes and gave the CDs to the acting chief.

Dr. Rao, service line manager and Chief of Radiation, contested appellant’s claim. He explained that the purpose of Ms. Murphree’s visit was to determine whether appellant possessed CDs that included private patient information and to locate them and place the CDs into the Agency’s custody. When appellant asked for some time to finish reading film, Dr. Rao instructed her to return to the conference room when she was finished. She was seen carrying a purse and exiting the third floor *via* a stairwell. Appellant returned 30 minutes later with a large bag. Ms. Murphree met appellant at the entrance to the conference room, but appellant did not stop or speak to her. Ms. Murphree followed appellant into her office. Dr. Rao then related an account that was consistent with Ms. Murphree’s statement. Appellant asked Ms. Murphree to leave the office, Ms. Murphree refused and appellant grabbed Ms. Murphree’s arm with both hands and pushed her backward toward the door. Ms. Murphree rubbed her arms and stated, “You pushed me.” She stated, “You pushed me,” to which Ms. Murphree responded, “I did not push you.” Appellant stated that she wanted Ms. Murphree out of her office “and began pushing with one hand toward the door and tried to shut the door.” Dr. Rao reported that he tried to investigate the matter further by scheduling two meetings with appellant on July 24 and 27, 2007, but appellant did not appear. He noted that appellant refused to cooperate with the agency privacy office on a matter of information security. Appellant also refused to follow VA police instructions to leave the office.

In a decision dated October 4, 2007, the Office denied appellant’s claim for compensation. It found that appellant cited no incidents or events that would afford coverage under workers’ compensation. The Office further found that appellant’s injury was a result of her own misconduct, as she resisted meeting with Ms. Murphree, became disruptive, shoved Ms. Murphree, ignored instructions and closed the door on Ms. Murphree’s finger: “This would be construed as insubordination of Dr. Rao’s directive, Ms. Murphree’s instructions and the VA police’s order and considered misconduct.” The Board has consistently held that an injury arising out of misconduct does not constitute an injury sustained in the performance of duty.

Appellant requested reconsideration. She placed the blame for the altercation and her post-traumatic stress disorder on Dr. Rao, whom she accused of providing misinformation to the privacy officer and to the VA police. Appellant submitted a December 13, 2007 medical report that the July 16, 2007 incident had lead to insomnia, bad dreams, anxiety and a diagnosis stating of post-traumatic stress disorder.

In a decision dated March 19, 2008, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that appellant had established no incidents occurring in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty, unless the injury is caused by willful misconduct of the employee.¹ "Willful misconduct" is generally regarded as deliberate conduct involving premeditation, obstinacy or intentional wrongdoing with the knowledge that it is likely to result in serious injury, or conduct that is in wanton or reckless disregard of probable injurious consequences.²

An allegation of willful misconduct is in the nature of an affirmative defense. The adjudicating agency has the burden, if it makes such an allegation, to prove that there was willful misconduct and that such misconduct caused the injury. If the adjudicator believes that the evidence in the case record justifies a finding of the injury being caused by willful misconduct of the claimant, he or she has the responsibility of making such a finding in the original adjudication of the case.³

ANALYSIS

In its original adjudication of the case on October 4, 2007, the Office found that appellant's actions were considered misconduct and that an injury arising out of misconduct does not constitute an injury sustained in the performance of duty. Willful misconduct is a statutory exclusion to coverage. It is therefore more accurate to state that, even if one were to assume that appellant sustained an injury in the performance of duty, there would be no coverage under the Act because the injury was caused by her willful misconduct.

The Board has carefully considered the accounts of what happened on July 16, 2007 and finds that the weight of the evidence supports a finding of willful misconduct. The Board gives particular weight to the accounts given by Ms. Idol and the investigating VA police officer, both of whom witnessed some of the events that took place. Ms. Murphree's statement offers a reasonably coherent and sensible account of what happened. Appellant's statement comes across as less credible. For instance, appellant stated that after reading the films, she went to her office to place her personal belongings before going to the conference room. That, appellant stated, is when Ms. Murphree cornered her and insisted that she open up her shoulder briefcase and give her the CDs. But we know from Ms. Idol's statement that after Dr. Rao left appellant in the reading room, appellant was seen about 45 minutes later exiting with her purse by the third floor stairwell and did not return for another 30 minutes and when she did return, she had a big black bag that she would later place under her desk. Appellant's failure to mention these details leads

¹ 5 U.S.C. § 8102(a)(1).

² *Abraham Finkelstein*, 4 ECAB 130 n.8 (1951).

³ *Paul Raymond Kuyoth*, 27 ECAB 498, 505 (1976), *reaff'd on recon.* 27 ECAB 253 (1976).

the Board to believe that she is not telling the whole truth. It is odd that she continued so strongly to distrust Ms. Murphree's identity, even after an introduction by the service line manager and Chief of Radiation. Appellant stated that Ms. Murphree, a "purported" privacy officer, did not validate her identity, but it appears that she never asked Ms. Murphree to present such validation. It is also odd that Ms. Murphree would be the one yelling for help when, according to appellant, it was Ms. Murphree who attacked. Appellant also failed to mention the VA police officer's instruction that both she and Ms. Murphree leave the office. She stated only that the officer told Ms. Murphree to step out of the office, a partial truth that hides her failure to obey the officer's instruction.

The conduct that places appellant's claim within the statutory exclusion to coverage is not her failure to report to the conference room. It is not her failure to cooperate with the privacy officer. It is not her failure to obey an instruction from the VA police officer. It is her unjustified deliberate attempt to physically remove Ms. Murphree from the office by force, in wanton or reckless disregard of probable injurious consequences. Appellant resorted to self-help by pushing Ms. Murphree to the door and trying to close the door on her. Any injury that appellant sustained to her forearms or psyche as a result of this physical violence is statutorily excluded from any coverage under the Act. The Board will therefore affirm the Office decisions denying benefits.

CONCLUSION

The Board finds that appellant's claimed injury on July 16, 2007 was caused by her willful misconduct.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2008 and October 4, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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