

**United States Department of Labor
Employees' Compensation Appeals Board**

J.W., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Northridge, CA, Employer**

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**Docket No. 10-563
Issued: November 1, 2010**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 20, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant was injured in the performance of duty on March 20, 2009.

FACTUAL HISTORY

On May 13, 2009 appellant, then a 28-year-old administrative specialist, filed a traumatic-injury claim (Form CA-1) alleging injury on March 20, 2009. She stated that she was assaulted at 10:30 p.m., while walking back to her hotel. The injury was described as depression, insomnia and loss of appetite.

By letter dated May 26, 2009, the Office requested that appellant submit additional information, including where the assault occurred, what she was doing at that time and whether a

police report was filed. It also sent a May 26, 2009 letter and EN1014 form to the employing establishment regarding appellant's travel status on March 20, 2009.¹

In a decision dated June 26, 2009, the Office denied the claim for compensation. It found the factual evidence did not establish an incident occurred as alleged.

By letter dated July 16, 2009, appellant requested reconsideration of her claim and discussed the March 20, 2009 incident. On that day she was on travel duty and staying at a hotel in Arlington, Virginia. Appellant left the hotel to buy cigarettes at a convenience store located two blocks from the hotel and while returning she was sexually assaulted. The employing establishment submitted the EN1014 form stating that on March 20, 2009 appellant was on travel duty for training in Arlington, Virginia. In a letter dated July 16, 2009, a supervisor noted appellant was on official government travel for training at headquarters. The supervisor indicated appellant did not initially file a police report as she wanted to maintain anonymity, but she did report the incident to the employer on her return to work on March 23, 2009.

In a decision dated November 20, 2009, the Office denied modification of the June 26, 2009 decision. It found, as follows: "The new factual and medical evidence failed to link any medical condition or factual situation to the alleged sexual assault on March 20, 2009. The Office has not received any police report, nor has it received any medical evidence from the time period or after which discussed the alleged assault."

LEGAL PRECEDENT

The Federal Employee's Compensation Act² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely "arising out of and in the course of employment."³

With respect to employees on travel duty, the Board has recognized the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

"Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."⁴

¹ The EN1014 form requests information regarding an employee's travel status and official duties.

² 5 U.S.C. §§ 8101-8193.

³ *Paul Foster*, 56 ECAB 208, 210 (2004).

⁴ 1 A. Larson, *The Law of Workers' Compensation*, § 25.01 (2000); see also *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993).

ANALYSIS

In the present case, the Office issued a November 20, 2009 merit decision denying modification of the June 26, 2009 Office decision. While describing the evidence submitted on reconsideration, the Office failed to properly identify the issue or make adequate findings. The initial question is whether appellant was in the course of employment at the time of the alleged assault on March 20, 2009. She described the time and place of the alleged incident while on official travel duty. No findings were made as to whether appellant was in the course of employment, with reference to the relevant facts and the general criteria applicable to performance of duty as it pertains to employees on travel.⁵ If appellant is found to be in the course of employment at the time of the March 20, 2009 incident, then the Office should make findings as to whether she sustained an injury arising out of her employment.⁶

The case will be remanded to the Office for proper findings and adjudication of the evidence on the issue presented. After such further development as it deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant sustained injury on March 20, 2009 while in the performance of duty.

⁵ See H.S., 58 ECAB 554 (2007).

⁶ See Bradford N. Reed, 56 ECAB 428 (2005).

ORDER

IT IS HEREBY ORDERED THAT the November 20 and June 26, 2009 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: November 1, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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