United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 13-318**
	)	**Issued: March 26, 2013**
DEPARTMENT OF VETERANS AFFAIRS, ALEXANDRIA MEDICAL CENTER, Pineville, LA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On November 26, 2012 appellant filed a timely appeal of an August 3, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she injured her neck, back and left shoulder in the performance of duty.

FACTUAL HISTORY

On June 4, 2012 appellant, then a 39-year-old nursing assistant, filed a traumatic injury claim alleging that on June 1, 2012 a coworker assaulted her while she was feeding a patient.

[1] 5 U.S.C. § 8101 *et seq.*

The employing establishment disputed appellant's claim stating that the assault occurred as she was using improper language and struck her coworker with a cart. The employing establishment alleged willful misconduct on the part of appellant.

Appellant's alleged assailant, Selena Nicole Gaylor, completed a statement on June 1, 2012 and stated that appellant referred to her as a lesbian and a lock jaw bitch. The police report stated that Ms. Gaylor struck appellant in the upper left shoulder. Appellant then struck Ms. Gaylor in the face. Ms. Gaylor stated that appellant was making inappropriate comments about her to another coworker, she confronted appellant and appellant began to scream at her and pushed a feeding cart into her.

Appellant confirmed that Ms. Gaylor had come to where she was working and hit her.

Appellant submitted medical evidence diagnosing cervical and thoracic strain.

In a letter dated July 3, 2012, OWCP requested additional factual and medical evidence from appellant and the employing establishment. On August 3, 2012 the employing establishment responded and stated that appellant and Ms. Gaylor had been friends, but that their friendship had ended. It stated that both employees had informed their supervisors that they did not wish to share responsibilities at work and that they did not get along. Appellant provided no additional response.

By decision dated August 3, 2012, OWCP denied appellant's claim finding that she was not injured in the performance of duty as the assault was the result of a personal matter imported from outside the employment.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach merely upon the existence of any employee/employer relation.[2] FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and

[2] *Minnie N. Heubner (Robert A. Heubner),* 2 ECAB 20, 24 (1948); *Christine Lawrence,* 36 ECAB 422, 423-24 (1985).

[3] *See* 5 U.S.C. § 8101 *et seq.*

in the course of employment."[4] "In the course of employment" deals with the work setting, the locale and time of injury.[5] In addressing this issue, the Board has stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he [or she] may reasonably be expected to be in connection with the employment; and (3) while he [or she] was reasonably fulfilling the duties of his [of her] employment or engaged in doing something incidental thereto."[6]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[7]

Larson states that 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 that would not otherwise be made, the employment becomes a contributing factor.[8] Generally, the Board has held that personal disputes between coworkers are not compensable if they arise outside the scope of employment.[9]

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.[10] In *Agnes V. Blackwell*,[11] 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 FECA, 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

---

[4] *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

[5] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

[6] *Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58, 59 (1954).

[7] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[8] A. Larson, *The Law of Workers' Compensation* § 8.00 (2006); *see also R.S.*, 58 ECAB 660 (2007).

[9] *J.F.*, Docket No. 10-1255 (issued January 5, 2011); *George A. Rodriguez*, 57 ECAB 224 (2005).

[10] *R.S.*, *supra* note 8.

[11] 44 ECAB 200 (1992).

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 June 1, 2012 did not arise in the course of her federal employment.

At the time of the assault, appellant was engaged in the performance of her duties as a nursing assistant, feeding a patient. 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 a factor of her employment gave rise to the assault.[12]

The evidence of record does not establish that appellant's employment contributed to or facilitated the assault of June 1, 2012.[13] 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 nursing assistant. Rather, it was the result of personal animosity that arose out of her private life and prior relationship with her coworker, an estranged friend.[14]

CONCLUSION

The Board finds that appellant's injury on June 1, 2012 did not arise in the course of her federal employment.

[12] *Supra* note 7.

[13] *Supra* note 8.

[14] *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board