

on that date. He submitted a statement that on April 18, 2012 at approximately 3:30 p.m. he was “on union time” and while walking down a hallway a coworker, Joe Smith, came up to him and stated that “your boys are campaigning against you” in an upcoming union election. Appellant alleged that there was a verbal altercation and Mr. Smith bumped him with his forehead and pushed him in the face.

The record contains a witness statement from Delores Overton that she heard loud talking and she came into the hall and told appellant and Mr. Smith to stop. By letter dated April 30, 2012, OWCP advised appellant that the evidence was not sufficient to establish the incident as alleged. It also advised that he needed to submit medical evidence regarding his claim.

On May 7, 2012 appellant submitted May 4, 2012 statements from three coworkers indicating that they observed scratches on appellant’s face. In a report of interview with Mr. Smith dated April 19, 2012, an employing establishment inspector reported that Mr. Smith denied striking or touching appellant. In an April 23, 2012 report, the inspector indicated that appellant was asked why Mr. Smith would push him, and appellant stated that it might be due to the upcoming union elections. The report also indicated that appellant was a union steward. In a letter dated May 24, 2012, the employing establishment argued that appellant had not submitted factual and medical evidence to establish his claim.

By decision dated July 25, 2012, OWCP denied the claim for compensation. It found that the altercation involved internal union business and was a private dispute imported into the workplace.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee’s emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.²

With regard to union activities in general, the Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.³ The Board has recognized an exception to the general rule in that employees performing representational functions which entitle them to official time are in the performance of duty and entitled to all benefits of FECA if injured in the performance of those functions. The rationale for

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Marie Boylan*, 45 ECAB 338 (1994).

this exception is that activity undertaken in the capacity of union office may simultaneously serve the interests of the employer.⁴

OWCP procedures discuss union representational functions and official time.⁵ There are specific guidelines for case development when union activity may be involved:

“When an employee claims to have been injured while performing representational functions, an inquiry should be made to the official superior to determine whether the employee had been granted ‘official time’ or, in emergency cases, would have been granted official time if there had been time to request it. If so, the claimant should be considered to have been in the performance of duty. This includes Postal Service employees who are ‘on the clock’ while performing representational activities under the National Agreement.⁶

“If an agency states that the employee was not performing an activity for which official time is allowed, [OWCP] should issue a letter warning [appellant] that the case will be denied unless additional information is provided, and allowing 30 days for a response. If there is no timely response from [appellant], a formal decision should be issued on the grounds that [appellant] is not in the performance of duty.

“If [appellant] provides evidence contradicting the [employing establishment’s] position, the official superior should be asked to reply to his evidence.... [OWCP] will accept the ruling of the [employing establishment] as to whether a representative was entitled to official time unless the ruling is later overturned by a duly authorized appellate body.^{7”}

ANALYSIS

Appellant has alleged that he was involved in a verbal and physical altercation with a coworker on April 18, 2012. According to appellant, he was “on union time” and the record indicates that he was a union steward. The July 25, 2012 OWCP decision finds the altercation was not a compensable work factor as it was private union business.

OWCP did not, however, follow its own procedures with respect to the development of the claim. There was little of evidence of record as to appellant’s work status at the time of the alleged incident on April 18, 2012. OWCP should have sought evidence from the employing establishment as to whether appellant was performing representational functions that would bring the alleged altercation within the performance of duty. The procedures noted above provide specific guidelines as to what constitutes representational functions and official time. If the employing establishment found that appellant was not performing representational functions,

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.16 (September 2010).

⁶ *Id.* 2.804.16(e).

⁷ *Id.*

appellant should have been advised of the finding and provided an opportunity to submit relevant evidence on the issue. Failing the submission of such evidence, the employing establishment's position that appellant was not in a representational capacity would determine the outcome of that issue.

The case will be remanded to OWCP to develop the case in accord with its own procedures. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded for further development in accord with OWCP procedures regarding union activity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 21, 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