

In a July 16, 2014 letter, an employing establishment official challenged appellant's claim noting that the July 2, 2014 assault was imported into the workplace from a private source. Appellant's former husband entered appellant's workplace and shot her in the face. The official noted that appellant's divorce from her husband was finalized on July 1, 2014.

In an August 1, 2014 letter, OWCP requested that appellant submit additional evidence in support of her claim.

In a statement received on August 18, 2014, appellant indicated that on July 2, 2014 she was working at the counter when her former husband entered the employing establishment and fired several bullets at her. One bullet grazed her nose and another entered her left cheek and exited her right ear. The record contains a Carroll County Sheriff's Office report dated July 2, 2014 in which appellant acknowledged that she had been arguing with her former husband "all day" on July 2, 2014.

Appellant submitted medical evidence in support of her claim, including a July 2, 2014 report of emergency medical care and reports of several surgeries to repair the wounds from the July 2, 2014 shooting.

By decision dated September 2, 2014, OWCP denied appellant's claim, finding that she was not injured in the performance of duty on July 2, 2014 as the assault was the result of a personal matter imported from outside the employing establishment.

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. 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 in the course of employment.³ In the course of employment deals with the work setting, the locale, and time of injury.⁴ 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 her master's business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while she was

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

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Denis F. Rafferty*, 16 ECAB 413 (1965).

reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.”⁵

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury arising out of the employment must also be shown, and this encompasses not only the work setting but also a causal concept. The facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.⁶

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.⁷

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.⁸ In *Agnes V. Blackwell*,⁹ 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 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 July 2, 2014 did not arise out of her federal employment.

At the time of the assault on July 2, 2014, appellant was engaged in the performance of her duties as a postmaster relief employee. On appeal she alleged that this fact alone was sufficient to establish coverage of her claimed injury. 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.¹⁰

⁵ *Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954).

⁶ *See Eugene G. Chin*, 39 ECAB 598 (1988).

⁷ A. Larson, *the Law of Workers’ Compensation* § 8.00 (2006); *see also R.S.*, 58 ECAB 660 (2007).

⁸ S.S., Docket No. 13-318 (issued March 26, 2013).

⁹ 44 ECAB 200 (1992).

¹⁰ *See supra* note 6.

The evidence of record does not establish that appellant's employment contributed to or facilitated the assault of July 2, 2014.¹¹ The increased risk of injury arose from a prior personal relationship with appellant's former husband, not from the type of work she was required to perform as a postmaster relief employee. Rather, it arose out of appellant's private life and relationship with her former husband. The facts of appellant's case are similar to those of *Agnes V. Blackwell*¹² where coverage was denied for an assault that arose from animosity which precipitated the assault and was imported into the employment from a prior romantic relationship.

On appeal, appellant alleged that the employing establishment had inadequate security and argued that this ostensible fact brought her claimed injury within coverage under FECA. However, she did not explain the basis for this argument. Appellant had the burden to prove her assault arose out of her employment, requiring that a factor of employment caused the injury.¹³ The evidence shows the assault on July 2, 2014 was motivated solely by her former husband's personal animosity toward appellant, imported from their personal relationship. Appellant's assertions of inadequate security in no manner establish that her employment facilitated an assault that otherwise would not have occurred.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish an injury in the performance of duty on July 2, 2014.

¹¹ See *supra* note 7.

¹² *Supra* note 9.

¹³ *Guadalupe P. Americano*, 53 ECAB 297 (2002).

¹⁴ *Yvonne D. McCrary*, Docket No. 04-1154 (issued July 27, 2005).

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board