



appellant stated, “[she] was thrown to the floor forcefully by another employee.” On the same form, appellant’s supervisor indicated that appellant’s regular tour of duty was 9:00 a.m. to 5:30 p.m., Monday through Friday. He indicated that the employing establishment was challenging appellant’s claim because the alleged injury did not occur in the performance of duty. The supervisor asserted that the February 11, 2013 injury occurred as a “result of [the injured worker’s] private life issues spilling over into the workplace.”

In statements dated February 11 and 20, 2013, appellant’s supervisor provided further information about the events of February 11, 2013. He noted that at approximately 11:30 a.m. on that date appellant advised him that a coworker had just “picked her up and thrown her to the floor.”<sup>2</sup> Mr. Tudor indicated that appellant advised that she and the coworker had lived together from March 2012 to January 2013, but that they had spilt up and moved into separate apartments. He stated, “[Appellant] had wanted to discuss reconciliation and was preventing [the coworker] from leaving the office when the incident occurred.”

Appellant submitted medical evidence in support of her claim. In a February 13, 2013 note, Dr. Shari Gamarnik, an attending Board-certified family practitioner, related that on February 11, 2013 appellant was “involved in a fight at work and got thrown to the ground by a coworker.” She diagnosed acute lumbar strain and acute left knee pain.

In a March 6, 2013 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for a February 11, 2013 work injury. It provided appellant with a questionnaire form containing questions to be answered about her claimed injury.

On March 27, 2013 appellant completed the development questionnaire form provided by OWCP. She indicated that her claimed injury occurred at approximately 11:00 a.m. on February 11, 2013 during her tour-of-duty hours which were from 7:45 a.m. to 4:30 p.m. Appellant stated that the supervisor, a coworker with whom she had a previous dating relationship, asked to speak with her. At the conclusion of the conversation, she told the coworker that they needed to speak to management. Appellant noted that the coworker was walking to the eighth floor freight elevator access and she was on his left side. Before entering the elevator area, she attempted to reach for a portfolio in his left hand. Appellant stated, “I was then thrown to the opposite of the hallway, from which I was standing, and landed on my left knee and side.” She indicated that there were no witnesses and that the incident has been reported to the local law enforcement and the employing establishment’s Inspector General.

In a March 26, 2013 report, another attending physician noted that appellant reported that on February 11, 2013 she stretched out her hand to pick up a file from a coworker, was shoved and pushed aside. Appellant then fell on her left knee.

In an April 19, 2013 decision, OWCP denied appellant’s claim that she sustained a work-related injury on February 11, 2013. It noted that she had not submitted sufficient evidence to establish that the events occurred as described and stated, “The reason for this finding is that

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<sup>2</sup> Appellant’s supervisor spoke to the coworker by telephone shortly thereafter and he asserted that he only “picked [appellant] up and set her to the side and she fell.” The coworker indicated that appellant had been impeding his attempt to enter the elevator.

your history of the claimed events are different with each medical report.” OWCP concluded that appellant’s claim was denied because she had not established the fact of injury.

In a November 20, 2013 brief, appellant’s counsel argued that the evidence of record was sufficient to show that appellant established the fact of injury for a work-related injury on February 11, 2103. Counsel asserted that appellant consistently stated that she was thrown to the ground by her coworker. Appellant also submitted additional medical evidence in support of her claim.

By decision dated November 22, 2013, OWCP denied appellant’s request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence and argument submitted by appellant was cumulative in nature and that the submitted argument did not show that OWCP erroneously applied or interpreted a specific point of law.

Appellant requested reconsideration. In a January 24, 2014 brief, counsel continued to argue that appellant established that she sustained an injury in the performance of duty on February 11, 2013. Appellant submitted an affidavit, signed on January 22, 2014, in which she further described the events of February 11, 2013. She stated:

“At approximately 11:00 a.m. on February 11, 2013, during my tour of duty hours, co-worker ... threw me to the ground, causing me injury. Immediately leading to this incident, [the coworker] had asked to speak with me. At the conclusion of the conversation, I told [the worker] that we needed to have a conversation with management. As we walked toward the eighth floor freight elevator access, I was on his left side when I attempted to reach for a portfolio also in [the coworker’s] left. At this time, [the coworker] threw me to the opposite side of the hallway from where I had been standing. I landed on my left knee and side. I reported the incident to local law enforcement and to the Inspector General for Tax Administration.”

Appellant also submitted additional medical evidence in support of her claim, including a September 19, 2013 report of an attending orthopedic surgeon. In a February 7, 2014 statement, appellant’s supervisor clarified that it was the coworker who advised him that he had recently moved out of the apartment he had shared with appellant and that their relationship had ended.

In an October 24, 2014 decision, OWCP’s Branch of Hearings and Review affirmed the April 19, 2013 decision as modified to reflect that appellant’s claim for a work-related February 11, 2013 injury was denied for the reason that it did not occur in the performance of duty. In denying the claim, it stated:

“It is clear from the submitted statements that the incident arose out of a personal matter having no connection with your employment. The incident did not occur simply because you were reaching for a work file. The relative circumstances leading up to the incident clearly demonstrates that you were not in the performance of your regular duties.”

## 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.<sup>3</sup> FECA provides for the payment of compensation for disability or death of an employee resulting from a 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.<sup>4</sup> In the course of employment deals with the work setting, the locale, and time of injury.<sup>5</sup> 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 reasonably fulfilling the duties of [her] employment or engaged in doing something incidental thereto.”<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> In *Agnes V. Blackwell*,<sup>10</sup> the employee sustained injury following an assault by a coworker with whom she had been romantically involved outside of

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<sup>3</sup> *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20 (1948); *Christine Lawrence*, 36 ECAB 422 (1985).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Denis F. Rafferty*, 16 ECAB 413 (1965).

<sup>6</sup> *Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954).

<sup>7</sup> *See Eugene G. Chin*, 39 ECAB 598 (1988).

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

<sup>9</sup> *S.S.*, Docket No. 13-318 (issued March 26, 2013).

<sup>10</sup> 44 ECAB 200 (1992).

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 February 11, 2013 did not arise in the course of her federal employment.

At the time of the assault on February 11, 2013, appellant was performing her duties during work hours. 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.<sup>11</sup>

The evidence of record does not establish that appellant's employment contributed to or facilitated the assault of February 11, 2013.<sup>12</sup> The increased risk of injury arose from a prior personal relationship which was imported into the workplace. Appellant's injury did not arise from the type of work she was required to perform. Rather, it was the result of personal animosity that arose out of her private life and prior relationship with the coworker. The facts of appellant's case are similar to those of *Agnes V. Blackwell* 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.<sup>13</sup>

On appeal counsel argued that the case of *Yvonne D. McCrary*<sup>14</sup> supported a finding that appellant sustained an injury in performance of duty on February 11, 2013 because the dispute between appellant and the coworker that led to the assault on that date was "exacerbated by the employment." The Board notes, however, that this case does not provide support for a finding of coverage under FECA. In *Yvonne D. McCrary*, the Board cited portions of a workers' compensation treatise by Professor Larson, including a portion in which it was stated, "Assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would not otherwise be made, the employment becomes a contributing factor." Professor Larson also noted, "When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment under any test." The Board found that the facts of the case, which involved an assault of the claimant by an exboyfriend, did not involve an exacerbation of the underlying dispute between the two by her employment.<sup>15</sup> Similarly, in the present case, appellant did not show that the dispute which led directly to the February 11, 2013 assault was exacerbated by her employment or that the assault would not have occurred but for

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<sup>11</sup> See *supra* note 7.

<sup>12</sup> See *supra* note 8.

<sup>13</sup> See *supra* note 10.

<sup>14</sup> Docket No. 04-1154 (issued July 27, 2005).

<sup>15</sup> *Id.*

the contribution of her employment. OWCP properly denied her claim on the grounds that her claimed February 11, 2013 injury did not occur in the performance of duty.

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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on February 11, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2015  
Washington, DC

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

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

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