

stress, depression, anxiety, and knife cuts on her arm and stomach in the performance of duty. Appellant related that when she entered the restroom at work, on her way to a meeting with the store director, J.G. grabbed her from behind by her necklaces and strangled her, stabbed her, repeatedly knocked her forehead into objects, and cut her throat with a knife.

By letter dated July 20, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a description of the nature of her relationship with J.G.

In an e-mail dated June 27, 2015, S.S., the store manager, indicated that on June 26, 2015 he encountered appellant “on the floor in the corner crying uncontrollably.” He related, “I asked her what happened and she stated, ‘He’s not supposed to be here. They said they could protect me.’ I asked her what happened and she said, ‘He assaulted me before, and he came in to talk to me.’” S.S. called base security. He advised that appellant had “an open investigation against a man that sexually assaulted her on base.” An investigative unit came to the store on June 26, 2015 and took her statement. On June 27, 2015 S.S. found appellant unconscious and a customer standing over her calling for emergency assistance. He related that her neck was bleeding and bruised and her necklace was broken. S.S. related, “[Appellant] said the assailant had attacked her in the bathroom in between [the] produce and meat department. The bathroom was damaged. Broken soap dispenser.” S.S. noted that paramedics took appellant to the hospital.

In an e-mail message dated June 29, 2015, L.M., the store director, indicated that he had placed appellant on administrative leave because of concerns for her safety.

In an e-mail message dated July 17, 2015, a military police officer advised that its investigations were ongoing and that it could not provide an initial report.²

In a July 28, 2015 e-mail message, appellant related that on July 25, 2015 she told S.S. and C.V. of “the situation.” On July 26, 2016 J.G., her assailant, came on base and into the commissary even though he had been banned from the base. Appellant asserted that management failed to take action to protect her even though it knew that J.G. was getting on base despite the ban. She noted that the attack on June 27, 2015 occurred in the “employees only” section of the commissary.

In a statement dated July 30, 2015, appellant related that she did not meet J.G. until June 24, 2015 when he sexually assaulted her in the parking lot of the Base Exchange. On June 26, 2015 he came to the commissary and she filed a police report. Appellant indicated that J.G. had “been banned from the base prior to the assault.” She maintained that the attack exacerbated her preexisting cervical spondylosis and stenosis.

In a telephone call dated August 27, 2015, OWCP spoke with an investigator about the June 27, 2015 assault. The investigator related that appellant alleged that J.G., who was in the

² The record contains e-mail messages about incidents that occurred subsequent to the claimed June 27, 2015 work incident, including matters concerning leave usage, appellant’s medical condition, and her request for reassignment to another area.

military, met her on June 24, 2015 in response to a Craigslist advertisement and sexually assaulted her in his car. On June 27, 2015 he attacked her at work.

By decision dated September 22, 2015, OWCP denied appellant's claim, finding that she was not in the performance of duty at the time of the June 27, 2015 assault.³ It determined that she had established the occurrence of the alleged incident and that she sustained a medical condition causally related to the incident. OWCP found, however, that the assault was imported into the workplace and thus not compensable.

On appeal appellant questions why the employing establishment did not submit evidence from coworkers who were present when the assault occurred. She relates, "I was, at the time of the assault, clocked into work and on shift, I was walking to a meeting that was required of me by L.M. to brief him on the events of the previous day, June 26, 2015. I would not have been at work that day due to the emotional trauma had L.M. not required of me a meeting that particular afternoon." Appellant notes that an assault arises out of employment if the risk of assault is increased due to the nature or setting of the work. She asserts that she was where she should reasonably be in connection with her employment as she was "clocked in, walking to meet with my Store Director, L.M. per his order. I was in the act of following his order to meet him at his office at that moment." Appellant maintains that security with the employing establishment assured her that she would be safe on base and that it had assigned her a security detail. She relates that she met J.G. once through a Craigslist advertisement but that he had been watching her at work before the assault. After appellant reported the assault the Office of Special Investigations (OSI) informed her that he "would be banned from the base and could [not] watch or follow me while at work any longer." When J.G. came to her work location on June 26, 2015, she told S.S. that she was in danger since the ban had not been enforced. Appellant asserts that J.G. was not a friend or acquaintance but a man she met once on base who sexually assaulted her, used her federal employment to track her, and used his military identification to access her work location and assault her at work.

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.⁴ 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

³ The record contains e-mail messages from appellant's coworkers about an incident between appellant and a coworker that occurred on July 18, 2015.

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

law, arising out of and in the course of employment.⁵ In the course of employment deals with the work setting, the locale, and time of injury.⁶ 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.⁷

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.⁸

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.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. In *Agnes V. Blackwell*,¹⁰ 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.

OWCP's procedure manual provides, "The employing [establishment] is required to complete the reports and statements needed and then submit the evidence to the OWCP. In several types of claims (*e.g.*, stress claims, claims with POD [performance of duty] issues such

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

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

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

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

⁹ *Id.*

¹⁰ 44 ECAB 200 (1992).

as premises, temporary duty travel, or recreational injuries), a statement from the employing [establishment] is imperative to properly develop and adjudicate the claim.”¹¹

ANALYSIS

Appellant filed a claim for injuries sustained on June 27, 2015 when she was assaulted at work on the way to a mandatory meeting with the store director. She maintained that on June 26, 2015 J.G., whom she had accused of sexual assault two days earlier, came into her work location. Appellant’s supervisor called the military police. On June 27, 2015 while she was at work, J.G. assaulted her, cut her with a knife, attempted to strangle her, and knocked her forehead against objects in a restroom. At the time of the assault, she was performing her duties during work hours. As discussed, 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 Board finds that the case is not in posture for decision regarding whether a factor of employment gave rise to the assault. The June 27, 2015 assault was imported into the workplace from appellant’s private life, and thus is not covered under FECA unless her employment became a contributing factor by facilitating an assault that would not otherwise be made.¹³ Appellant alleged that she was at work on June 27, 2015 at the order of the store director, L.M., to discuss J.G.’s confronting her at work on June 26, 2015. She also maintained that security with the employing establishment told her that the alleged assailant no longer had access to the premises and that it was safe for her to return to her work location. In developing the claim, OWCP did not request a statement from the employing establishment regarding the June 27, 2015 incident. As discussed, its procedures provide that in case where performance of duty is an issue, a statement from the employing establishment is necessary to adequately adjudicate the claim.¹⁴

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.¹⁵ The Board finds that OWCP did not sufficiently develop the evidence regarding whether appellant was directed to come to work on June 27, 2015 at the request of the store manager to discuss the events of June 26, 2015 or whether the employing establishment told her that she could come into work because her assailant had been banned from the work location. On remand, OWCP should obtain a statement from the employing establishment addressing these

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

¹² See *B.T.*, Docket No. 15-0786 (issued June 10, 2015).

¹³ See *supra* note 8.

¹⁴ See *supra* note 11.

¹⁵ See *L.L.*, Docket No. 12-194 (issued June 5, 2012); *N.S.*, 59 ECAB 422 (2008).

allegations. After such further development as deemed necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 9, 2016
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board