

supervisor checked boxes marked “Yes” indicating that appellant was injured in the performance of duty and that the injury was caused by a third party. The supervisor reported that the third party was unknown and that reference should be made to a Broward County Sheriff’s report regarding the incident. Appellant stopped work on October 18, 2016 and returned to work on October 19, 2016.

Appellant submitted a partially completed October 17, 2016 disability certificate and an unsigned October 17, 2016 document from Broward Health North describing pain medication prescribed for him on that date.

In an October 27, 2016 letter sent to appellant and the employing establishment, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It requested that appellant complete and return a development questionnaire to provide information concerning the October 17, 2016 incident, including whether he had a personal relationship outside of work with the person who assaulted him, and whether he had an argument with this person. OWCP also requested that appellant submit a copy of a police report documenting the incident. In the same letter, it requested that the employing establishment submit treatment notes if appellant was treated at an employing establishment medical facility.

Appellant submitted answers to OWCP’s development questionnaire. He indicated that he was delivering mail at the time of the claimed October 17, 2016 injury. Appellant noted that he did not have an argument with the person who assaulted him, and indicated that he did not know him or have a personal relationship with him.

Appellant also submitted medical evidence in support of his claim, including the report of an October 17, 2016 emergency room visit by Dr. Holly Wilson, a Board-certified emergency medicine specialist, at which time he reported that on the same date a man approached him at work, accused him of talking to his girlfriend, and punched him in the right side of his neck. Dr. Wilson diagnosed blunt neck trauma.

In an Incident/Investigation Report completed on October 17, 2016, an officer of the Broward County Sheriff’s Office indicated that on October 17, 2016 he went to a residence in the city of Pompano Beach, Florida in response to a claimed battery which had been reported at 5:20 p.m. He noted that appellant advised that he was on duty and delivering mail on his normal mail route in the area when a resident punched him on the side of his face. Appellant reported that he was approached by the assailant while he was stopped and sitting in the driver’s seat of his postal vehicle and that the assailant started accusing him of making sexual comments to his girlfriend a few days prior. The officer noted that appellant reported telling the assailant that he did not make any comments to his girlfriend and that the assailant suddenly struck him two times on the right side of his jaw area. He indicated that he observed swelling to the right side of appellant’s jaw area and that appellant was transported by ambulance to Broward Health North with nonlife threatening injuries. The officer made contact with the girlfriend of the assailant who reported that, three days prior (October 14, 2016), appellant approached her while delivering mail at her residence and started commenting to her that she was pretty and that he wanted to go inside her residence with her. The girlfriend reported that her boyfriend, the assailant, was out of town on that date, but that upon his return she informed him of the alleged incident. On October 17, 2016 when appellant arrived in the area, the girlfriend pointed him out

to her boyfriend. The officer made contact with the assailant who admitted that he struck appellant because of his girlfriend's allegations, noting that appellant "should n[o]t have [stated] that to his girlfriend." He arrested the assailant for battery and took him into custody.

In a December 5, 2016 decision, OWCP denied appellant's traumatic injury claim, finding that the October 17, 2016 incident/assault did not occur within the performance of duty. Although the assault occurred while appellant was working, OWCP found that it "was due to personal issues," noting that the Sheriff's incident/investigation report indicated that appellant had previously "made inappropriate comments to [the assailant's] girlfriend...."

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 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.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 noted that to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in his or her 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 or her employment, or engaged in doing something incidental thereto.⁵

This alone is insufficient 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 employing establishment benefit is derived or an employment requirement gave rise to the injury.⁶

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

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).

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

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

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

ANALYSIS

On October 17, 2016 appellant was seated in his postal delivery vehicle on his assigned route when an unknown male assailant punched him on the right side of his face. The local Sheriff's Office arrested the assailant for battery and he was transported to a nearby hospital for treatment and was later released. In a December 5, 2016 decision, OWCP denied appellant's traumatic injury claim finding that the October 17, 2016 assault "was due to personal issues," and therefore, it did not arise in the performance of duty.

The Board finds that appellant's injury on October 17, 2016 did not arise in the course of his federal employment, and that he did not establish a traumatic injury in the performance of duty on that date, as alleged.

The evidence of record reveals that, at the time of the assault on October 17, 2016, appellant was engaged in the performance of his usual employment duties, *i.e.*, delivering mail on his usual mail route. However, time, place, and manner are not alone sufficient to establish entitlement to compensation. Appellant must also establish that his injury arose out of his employment or that a factor of his employment gave rise to the assault.⁹

The evidence of record does not establish that appellant's employment contributed to or facilitated the October 17, 2016 assault. The increased risk of injury arose from a reported personal exchange between him and a woman on his delivery route, which was imported into the workplace.¹⁰ Appellant's injury did not arise from the type of work he was required to perform. Rather, it was the result of personal animosity that arose out of nonwork-related comments of a personal and private nature he allegedly made to a woman on his delivery route. The record contains an October 17, 2016 police report which indicated that the woman told the investigating officer that a few days earlier appellant commented that "she was pretty and [he] wanted to go insider her residence with her." She later informed her boyfriend of the alleged incident, which ultimately led to her boyfriend assaulting appellant on October 17, 2016. The Board notes that

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

⁸ S.S., Docket No. 13-0318 (issued March 26, 2013).

⁹ *See supra* notes 6 and 7.

¹⁰ *See supra* note 8.

appellant did not provide a statement to OWCP denying that he made the comments reported by the girlfriend of the assailant.¹¹

The Board has on numerous occasions found that OWCP properly denied coverage for an assault that arose from animosity which precipitated the assault and was imported into the employment. For example, in *Agnes V. Blackwell*, the employee sustained an injury following an assault by a coworker with whom she had been romantically involved outside of work.¹² 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. Similarly, in *B.T.*, coverage was denied to a claimant because it was determined that the assault she suffered stemmed from a personal relationship with her ex-boyfriend which was imported into the workplace.¹³ In *M.B.*, the claimant was assaulted by her former husband and coverage was denied despite the fact that he also was a coworker because it was determined that the assault occurred due to animosity flowing from the private relationship imported into the workplace.¹⁴

The Board acknowledges that the instances of personal animosity which were imported into the workplace in the above-noted cases arose directly between each claimant and her assailant. While appellant did not have a personal relationship with the assailant, it was his personal relationship with the assailant's girlfriend, albeit brief in nature, which created the animosity which was imported into the employment from his private life and ultimately led to the October 17, 2016 assault for which coverage was claimed.¹⁵ Therefore, appellant did not establish a traumatic injury in the performance of duty on October 17, 2016, as alleged.

Appellant may submit additional evidence, together with a written request for reconsideration to OWCP within one year of the Board's 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 has not met his burden of proof to establish an injury in the performance of duty on October 17, 2016, as alleged.

¹¹ The October 17, 2016 Sheriff's incident/investigation report indicated that after the assailant accused appellant of making "sexual comments to his girlfriend ... he told [the assailant] that he did not make any comments to [his girlfriend]."

¹² 44 ECAB 200 (1992).

¹³ Docket No. 15-0786 (issued June 10, 2015).

¹⁴ Docket No. 15-0215 (issued April 24, 2015).

¹⁵ See *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board