

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA E. CRAMER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 01-70; Submitted on the Record;
Issued November 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On October 27, 1997 appellant, then a 50-year-old program analyst, filed a traumatic injury claim alleging that on October 6, 1997 she was assaulted and hit in her upper right arm by another employee. On the back of the form, the employing establishment contested the claim alleging that appellant caused the incident by holding a subordinate against her will.

The record contains reports of contacts by Robert T. Johnson, Charlotte W. McTerrell, Joy Williams, Donald E. Sylvia and Jerri Lassard, who described the incident with appellant and Joy Williams. The reports indicate that the altercation occurred when appellant saw Ms. Williams wearing a pink Breast Cancer Awareness ribbon which appellant believed had been taken from her order Ms. McTerrell, Ms. Lassard and Mr. Sylvia all note that appellant told them Ms. Williams assaulted her by hitting her and she was making a formal complaint.

In an investigation report dated November 13, 1997, it was concluded that appellant held Ms. Williams against her will on October 6, 1997 and that she refused to allow Ms. Williams to call Ms. Lassard. The report also indicated that witnesses heard Ms. Williams call for help indicating she was fearful of her safety. The report indicated appellant had a bruise on her arm which she attributed to Ms. Williams punching her. It was determined that the altercation occurred when appellant saw Ms. Williams wearing a ribbon which she believed was part of her order and she demanded Ms. Williams tell her where she got the ribbon. The report further noted that appellant prevented Ms. Williams from trying to call Ms. Lassard and blocked the door to prevent her from leaving. Ms. Williams was heard screaming for help while running out of the room.

By decision dated January 26, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the basis that fact of injury was not established. Specifically, the

Office found that appellant had not established that a medical condition existed for which compensation should be paid.

On February 20, 1998 appellant's counsel requested an oral hearing.

By decision dated August 28, 1998, the hearing representative set aside the January 26, 1998 decision and remanded for further medical and factual development of the October 6, 1997 incident.

In a report dated October 23, 1998, Dr. Samuel H. Albert, an attending Board-certified psychiatrist, diagnosed depression due to the October 6, 1997 incident.

The employing establishment submitted various evidence to support its contention that appellant's version of events was incorrect and prior complaints regarding appellant's behavior towards coworkers

By decision dated December 16, 1998, the Office denied appellant's claim on the basis that the incident did not occur in the manner alleged and that appellant was not the victim of the event, but was actually the instigator.

By letter dated January 26, 1999, appellant's counsel requested an oral argument which was held on May 16, 1999.

By decision dated July 16, 1999, the hearing representative affirmed the January 26, 1999 decision denying appellant's claim. The hearing representative determined that the discrepancies in the record cast serious doubt on appellant's version of how the October 6, 1997 incident occurred.

Appellant's counsel requested reconsideration on January 11, 2000.

On April 10, 2000 the Office issued a merit decision denying appellant's reconsideration request.

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

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ 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."² "In the course of employment" deals with the work setting,

¹ 5 U.S.C. §§ 8101-8193.

² *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

the locale and time of injury.³ 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 he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.”⁴

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.⁵

In the present case, there is no dispute that, at the time of the alleged assault, appellant was at a place and time where she would be expected in order to carry out the business of the employing establishment. The question for determination is whether the altercation arose out of appellant’s employment.

Larson, in addressing assaults arising out of employment, states: “Assaults arise out of the employment ... if the reason for the assault was a quarrel having its origin in the work.”⁶ Thus, if the alleged assault occurred because of a dispute over work-related matters it is covered as arising out of the employment.

The record contains evidence that appellant and Ms. Williams had a quarrel over where Ms. Williams obtained a ribbon for a Breast Cancer Awareness event which contributed to the assault. The evidence also establishes that appellant was reasonably fulfilling the duties of her employment at the time of the verbal altercation on October 6, 1997. The Office found in its December 16, 1998, January 26, 1999 and April 10, 2000 decisions that appellant’s holding Ms. Williams’s against her will caused the assault and, therefore, the resulting incident was not a covered work event. Although appellant’s detaining of Ms. Williams during their exchange may have been inappropriate, Ms. Williams punched appellant in her arm and screamed for help to get away from appellant detaining her in the room. As the Board held in *Robert L. Williams*,⁷ “[T]here is no provision in the Act authorizing the denial of compensation because ... the employee was an ‘aggressor,’ or the ‘initiator,’ or otherwise did something imputing culpability

³ *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

⁴ *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

⁵ See *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

⁶ *A. Larson. The Law of Workman’s Compensation*, § 11.00, quoted with approval by the Board in *Eric J. Koke*, 43 ECAB 638, 641 (1992); *Sylvester Blaze*, 37 ECAB 851, 853 (1986).

⁷ *Robert L. Williams*, 1 ECAB 80 (1948).

or fault on his part.”⁸ Appellant remained in the performance of duty at the time of the altercation.

The Board, therefore, finds that, as the assault on appellant on employment premises resulted from a dispute, which occurred during appellant’s tour of duty and regarded work issues, the assault bears a sufficient relationship with her employment to afford coverage. There is no evidence that the basis for the altercation was imported to the work environment. The issue thus becomes whether the medical evidence establishes that this factor contributed to appellant’s emotional condition.⁹

As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for the preparation of a statement of accepted facts and referral of appellant to an appropriate medical specialist for an opinion on whether he sustained an emotional condition in the performance of duty causally related to a compensable factor of employment. After such further development of the evidence as it considers necessary, the Office shall issue an appropriate decision on appellant’s entitlement to benefits.

The decision of the Office of Workers’ Compensation Programs dated April 10, 2000 is hereby set aside and the case is remanded for further consistent with the above opinion.

Dated, Washington, DC
November 15, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁸ *Id.* at 82.

⁹ *See Abe E. Scott*, 45 ECAB 164 (1993).