

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York City, NY, Employer**

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**Docket No. 06-880  
Issued: September 12, 2006**

*Appearances:*  
*M.V., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 29, 2005 decision of an Office hearing representative who affirmed the denial of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained an injury in the performance of duty on December 1, 2004; and (2) whether she is entitled to reimbursement for medical services provided on December 1, 2004.

**FACTUAL HISTORY**

On December 3, 2004 appellant, then a 59-year-old mail processing clerk, filed a traumatic injury claim alleging that she sustained emotional and physical injury on December 1, 2004 when she was assaulted by a courier for a local bank, James Green, during a dispute over a piece of certified mail. She was taken by ambulance from the employing establishment to the

emergency room on December 1, 2004 because of her high blood pressure and nervous condition. Appellant returned to work on December 3, 2004 and was placed on an emergency suspension the same day. She returned to work on or about December 8, 2004.

In two letters dated June 13, 2005, the Office notified appellant that additional factual and medical evidence were required to substantiate her claim.

In statements dated December 2 and 10, 2004, appellant described the alleged assault of December 1, 2004. She stated that Mr. Green, a courier for J.P. Morgan/Chase Bank, started to yell at her when she insisted on signing a form due to the fact that he had received a piece of certified mail that was not addressed to his employer. Mr. Green did not want to have the form signed and an argument arose between appellant and Mr. Green. Appellant stated that two supervisors, Ms. Spears-Sussewell and Aida Vera, tried to explain the deletion procedure to Mr. Green. When she attempted to write "delete" on the form, Mr. Green forcefully struck and grabbed her left hand, jolting her towards him while simultaneously tearing the Form. Appellant stated that Mr. Green did not release her hand until she asked Ms. Vera in a loud voice to call the Postal Police. She went to the medical department and her blood pressure was checked. Paramedics were called and she was transported to Bellevue Hospital.

In a December 12, 2004 statement, appellant described the emergency suspension of December 3, 2004 and alleged that she did not understand why she was suspended. She stated that she became nervous when Mr. Green arrived on December 3, 2004 and sat down at a table across from her to verify J.P. Morgan/Chase Bank express and certified mail. Appellant asked three supervisors, Mr. Davis, Mr. McKeogh and F. Matthews, to call the Postal Police as she felt threatened in the presence of Mr. Green. When the supervisors declined she called the Postal Police herself. Appellant was then placed on an emergency suspension and escorted out of the building by the Postal Police.

In support of her claim, appellant submitted an incident information slip which noted a third degree assault of December 1, 2004. In a December 2, 2004 report, Dr. Carlos F. Driggs, a Board-certified internist, diagnosed her with a "minor wrist sprain" of the left side. He noted that appellant stated that the injury occurred at her job. In a January 11, 2005 return to work/school slip, Dr. Louis C. Rose, a Board-certified orthopedic surgeon, noted that appellant was under his care for carpal tunnel syndrome of the left side and advised that she was released to work on January 12, 2004.

In a December 2, 2004 statement, Mr. Green acknowledged having a disagreement with appellant on December 1, 2004. He stated that, when she started to write on his firm sheet, he "tried to stop her from writing on it by pulling the firm sheet away, while it was on the table. *At no time did I touch her but she did grab my hand and tried to pull the firm sheet back. That's how the firm sheet got ripped.*" (Emphasis in the original.) Mr. Green further stated that appellant became very agitated and falsely accused him of hitting her. He denied ever striking or touching appellant. Mr. Green indicated that, once the firm sheet was torn, he raised his hands in the air and allowed her to sign it.

The employing establishment submitted several witness statements. In a December 2, 2004 statement, Carl Lowe, a clerk, noted that on December 1, 2004 at approximately 7:00 a.m.,

Mr. Green and appellant had a disagreement over a certified letter. He indicated that the letter was sent to Chase Manhattan Bank in error and appellant wanted to write on Mr. Green's receipt while he did not want any changes on his copy.

In a December 2, 2004 statement, Ms. Spears-Sussewell, a supervisor, stated that on December 1, 2004 at about 7:15 a.m., appellant approached her about a problem concerning a piece of mail that did not belong to Chase Bank. Mr. Green said that it was not necessary to annotate anything on his sheet so long as it was on appellant's sheet. During the time she was with appellant and Mr. Green, there was no physical contact. Ms. Spears-Sussewell also indicated that she returned to her section once Ms. Vera arrived.

In a December 2, 2004 statement, James M. Williams, a clerk, indicated that he was sitting within a few feet of appellant and Mr. Green and witnessed what happened. On December 1, 2004 at about 7:20 a.m., he saw Mr. Green tell appellant that he would not sign for the piece of mail which did not belong to him as his supervisor had instructed him not to sign in such cases. Mr. Williams stated that Ms. Vera came down and asked appellant to delete that one item. Ms. Vera also asked Mr. Green for the firm sheet he had received from appellant and, after she read the firm sheet, she put it down on the table and appellant reached to get it. Mr. Green asked her not to write on it and she then reached for the firm sheet and took it out of Mr. Green's hands, ripping it. Mr. Williams indicated that appellant then wrote on the firm sheet and gave it back to Mr. Green, who took it and left. He stated that Mr. Green never raised his voice or touched appellant.

In a March 12, 2005 statement, Ms. Vera indicated that appellant had called her downstairs as she was having a disagreement with the courier for J.P. Morgan. While she was present, appellant asked Mr. Green for the firm sheets and, as she went to write on it, Mr. Green reached over to take the sheet away from her. Ms. Vera indicated that Mr. Green tried to slide the paper off the table while appellant was writing on it. Appellant got upset and requested the Postal Police.

By decision dated August 10, 2005, the Office denied appellant's claim on the basis that fact of injury had not been established. The Office accepted as factual that there was a disagreement over a mail transaction, but found that there was no evidence to support that appellant was assaulted by Mr. Green as alleged.

In a September 7, 2005 letter, appellant requested a review of the written record. She stated that, although there were contradicting statements regarding the incident, she had to be taken to the hospital because of the incident and sustained a strain of her left wrist and hand. Appellant requested that her medical expenses be covered. Progress notes dated March 21, 22 and 26, 2005 from White Plains Hospital Center were submitted.

By decision dated December 29, 2005, an Office hearing representative affirmed the Office's August 10, 2005 decision.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

Regarding appellant's claim for a physical injury, when an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury. The employee must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>4</sup> To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>5</sup>

The claimant also has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment.<sup>7</sup>

Regarding the emotional condition aspect of appellant's claim, workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *Tracey P. Spillane*, *supra* note 2; see also *Betty J. Smith*, 54 ECAB 174 (2002). 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004).

<sup>6</sup> *Id.* See also *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.<sup>8</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>10</sup>

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially-assigned duties.<sup>11</sup> Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>12</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant, a clerk, was performing her duties at the time of the December 1, 2004 altercation with Mr. Green, a bank courier. A dispute arose as to whether he would allow her to write a notation on a form he had in his possession pertaining to a letter he was given. Appellant alleged that, when she went to write on the form, Mr. Green forcefully struck/grabbed her hand and tore the form. Mr. Green denied that he ever touched her and that it was appellant who grabbed his hand and pulled on the form. The record contains witness statements to both

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<sup>8</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>12</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>13</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

versions of this incident. Appellant was treated at the hospital that day for her blood pressure and, on December 2, 2004, was diagnosed with a minor strain of the left wrist. On December 3, 2004 she returned to work. Mr. Green subsequently arrived that day and sat down at a table across from appellant to verify the bank's express/certified mail. Appellant asked her supervisors to call the police. When they did not do so she called the police herself. Following this, she was placed on an emergency suspension.

As to the December 1, 2004 altercation and alleged left wrist injury, it is clear that appellant was performing her assigned duties when an altercation arose over the completion of a form. This was not a personal dispute carried into the workplace.<sup>14</sup> Appellant was in a place she was reasonably expected to be working and was engaged in fulfilling her duties of employment. The altercation arose over work-related matters, *i.e.* the completion of a form which Mr. Green had in his possession. The fact that appellant possibly was the "aggressor" or the "initiator" or otherwise did something imputing culpability or fault by pulling the form away from Mr. Green would not preclude recovery or act as a bar to her claim.<sup>15</sup> The fact that she may have grabbed Mr. Green's hand and tried to pull the form away does not act as a bar to her claim for compensation benefits for the alleged left wrist injury.

As the altercation arose in the performance of duty, any injury resulting from the altercation would be covered under Federal Employees' Compensation Act regardless of fault. As to the denial of the left wrist injury, the decision will be set aside as the Office did not consider the medical evidence. On remand of the case record, the Office should proceed to develop appellant's claim on the issue of the alleged left wrist strain.

With respect to the emotional component of appellant's claim, that the disagreement between appellant and Mr. Green arose over a mail transaction and the subsequent altercation of December 1, 2004 was in the performance of duty. As such, the December 1, 2004 incident is a compensable employment factor as she was in the performance of her duties when the incident occurred.<sup>16</sup>

Appellant has alleged that she was humiliated by the emergency suspension of December 3, 2004. As noted, on December 3, 2004, Mr. Green sat down at a table across from her to verify the bank's express/certified mail. After appellant requested that her supervisors call the police, she called them herself. Appellant was placed on an emergency suspension. A suspension is an administrative function of the employer<sup>17</sup> and is not a compensable employment factor unless error or abuse is shown.<sup>18</sup> The suspension arose from appellant calling the Postal Police on December 3, 2004. She presented no evidence that management's action of placing

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<sup>14</sup> See *Arlene F. Stidham*, 46 ECAB 674 (1995).

<sup>15</sup> *Id.*, see also *Eric J. Kike*, 43 ECAB 638, 641 (1992).

<sup>16</sup> See *Lillian Cutler*, *supra* note 8.

<sup>17</sup> See *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>18</sup> See *Margaret Lublin*, *supra* note 12.

her on an emergency suspension on December 3, 2004 was erroneous or abusive. Appellant has not established a compensable employment factor in this regard.

Appellant established a compensable work factor pertaining to the mail altercation on December 1, 2004. However, the medical evidence does not show that an emotional injury resulted from this compensable factor. There is no medical opinion evidence to establish that an emotional condition resulted from the December 1, 2004 incident. The only medical opinion evidence of record is the opinion of Dr. Driggs, which deals solely with the left wrist injury aspect of her claim. This report is not relevant to her claim of an emotional condition. Appellant did not establish that she sustained an emotional condition due to the December 1, 2004 altercation.

### **LEGAL PRECEDENT -- ISSUE 2**

When a federal employee sustains a job-related injury which may require medical treatment, the designated employing establishment official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 within four hours.<sup>19</sup> A properly executed Form CA-16 creates a contractual obligation which does not involve the employee directly, to pay for the cost of the examination and treatment regardless of the action taken on the employee's claim.<sup>20</sup> A claimant shall be reimbursed for reasonable and necessary expenses, including transportation incident to obtaining authorized medical services, appliances or supplies.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

Appellant contends that she sustained a left wrist strain and incurred medical expenses when she was transported by ambulance to a local hospital. On appeal to the Board, she addressed the denial of her medical and hospital claims. Although appellant contends that the employing establishment called the ambulance to transport her to a local hospital on December 1, 2004, there is no evidence that the employing establishment authorized her treatment on that day. There is no evidence of a Form CA-16, attending physician's report or any other document provided by the employing establishment which contractually authorized the cost of her medical treatment or her transportation to the local hospital on December 1, 2004. Based on the evidence currently of record, appellant is not entitled to reimbursement of the ambulance-hospital expenses incurred on December 1, 2004.

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<sup>19</sup> 20 C.F.R. § 10.300(b).

<sup>20</sup> *Frederick J. Williams*, 35 ECAB 805 (1984).

<sup>21</sup> 20 C.F.R. § 10.315.

**CONCLUSION**

The Board finds that the case is not in posture for whether appellant sustained a left wrist injury as a result of the December 1, 2004 altercation. The Board finds that she has not met her burden of proof to establish that she sustained an emotional injury in the performance of duty. The Board finds that appellant has not established entitlement to reimbursement of ambulance-hospital expenses, on a contractual basis, incurred on December 1, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2005 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part and remanded for further consideration consistent with this opinion.

Issued: September 12, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board