U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID M. THOMPSON and DEPARTMENT OF JUSTICE, Washington, D.C.

Docket No. 96-2017; Submitted on the Record;
Issued June 19, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant was injured in the performance of duty on February 24, 1995.

Under the Federal Employees' Compensation Act an employee on travel status or on a special mission is in the performance of duty 24 hours a day when he is engaged in activities essential or incidental to his special duties. Examples of such activities are eating, returning to a hotel after eating dinner and engaging in reasonable activities within a short distance of the hotel where the employee is staying. However, when a claimant voluntarily deviates from such activities and engages in matters, personal or otherwise, which are not incidental to the duties of his temporary assignment, he ceases to be under the protection of the Act. Any injury occurring during these deviations is not compensable.[1]

In the present case, appellant, a trial attorney, was injured on February 24, 1995 while jogging during a lunch period on a trip to San Diego, California to conduct a hearing.[2] The Board addressed a similar factual situation in the case of *Evelyn S. Ibarra*, where the employee, was injured while jogging during a lunch break while on travel status to San Diego for training. In that case, the Board found: "[A]ppellant's jogging during her lunch time was not an incident reasonably related to her temporary-duty assignment, such as eating or traveling to her hotel, but was a personal recreational activity."[3]

In the present case, as in *Ibarra*, appellant's jogging occurred during his lunch hour off the premises of the employing establishment and was not a regular incident of employment. The

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[1] *Lindsay A.C. Moulton*, 39 ECAB 434 (1987).

[2] Appellant's regular duty station is Washington, D.C.

[3] 45 ECAB 840 at 841 (1994).

employing establishment indicated, and appellant acknowledged, that it encouraged employees to participate in physical activity, but did not require them to do so. Appellant stated that he ran to maintain his physical stamina and mental acuity during court proceedings and to relieve stress related to his work. This does not establish that the employing establishment received a substantial benefit from appellant's jogging beyond the intangible value of improvement in appellant's health and morale.[4] As appellant's injury while jogging is not reasonably incidental to his travel status nor a recreational activity covered by the Act, it did not occur within the performance of duty.[5]

The decision of the Office of Workers' Compensation Programs dated March 20, 1996 is affirmed.

Dated, Washington, D.C.
June 19, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] The Board has determined that a recreational activity is within the course of employment when it occurs on the premises of the employer during a lunch or recreational period as a regular incident of the employment; or the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation. *Archie L. Ransey*, 40 ECAB 1251 (1989).

[5] Appellant has also alleged that his heart attack on February 24, 1995 was related to stress in his employment. This issue, however, was not decided in the Office hearing representative's March 20, 1996 decision, and therefore can not be decided by the Board on appeal.