U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LaTONYA BAKER and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Atlanta, Ga.

Docket No. 96-1834; Submitted on the Record;
Issued October 22, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant was injured in the performance of duty on April 18, 1995.

On April 24 ,1995 appellant filed a claim for an injury to her right ankle, right knee, right elbow, middle back and head sustained on April 18, 1995 when she fell on banana peels in a stairwell while going to purchase a cup of coffee. After developing the evidence, the Office of Workers' Compensation Programs denied appellant's claim by an October 31, 1995 decision finding that appellant was not injured in the performance of duty, as her injury occurred one hour prior to her official starting time and appellant was on the premises of the employing establishment for her personal convenience. Upon appellant's request for reconsideration, this decision was affirmed by an Office decision dated April 26, 1996.

Generally, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before and after working hours, or at lunch time, are compensable. This also includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts, and what constitutes a reasonable interval depends not only on the length of time involved but also on the circumstances occasioning the interval and the nature of the employee's activity.[1] Appellant has the burden of establishing the occurrence of the alleged injury at a time when the employee may reasonably be said to be engaged in his or her master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[2]

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[1] *Barbara Roy*, 42 ECAB 960 (1991); *Margaret Gonzalez*, 41 ECAB 748 (1990).

[2] *John H. Woods, Jr.*, 39 ECAB 971 (1988).

The Board finds that appellant was not injured in the performance of duty on April 18, 1995.

Appellant's injury occurred at or shortly after 8:00 a.m. Her regular duty hours were from 9:00 a.m. to 5:45 p.m., and those were her assigned work hours on April 18, 1995. This one-hour interval before regular work hours began was not in and of itself necessarily an unreasonable one, if appellant was at work this early to perform the employer's business.[3] In an August 22, 1995 telephone conference with the Office, appellant stated that her purpose in reporting to work early was "to prepare … for the day, read memos that may have been issued, get coffee, and/or read the paper." In her letter requesting reconsideration of the Office's October 31, 1995 decision, appellant stated that she and some coworkers "arrived early to read Hotlines and other memos … or to complete forms and often to begin working prior to schedule."

Appellant's statements do not establish that she was at work one hour early on April 18, 1995 to perform her employer's business. If she was there to drink coffee and read the paper, her situation is no different from those cases where compensation was denied because employees were on the employing establishment's premises outside their regular work hours for personal reasons, such as avoiding traffic or exercising,[4] filling a prescription,[5] retrieving pills,[6] or eating breakfast.[7] One of appellant's coworkers, in a November 16, 1995 statement, stated that employees were allowed "to come in early to catch up on data, memos, changes in policy, etc. Most of these activities could not be performed nor accomplished during our usually scheduled periods of time." This statement and appellant's statements, however, do not establish that appellant was at work on April 18, 1995 an hour early to perform work she could not perform during her regular working hours, or that any work activities to be performed before regular working hours took substantially all or even most of the hour appellant spent at work before these regular working hours began. The evidence does not establish that appellant was on the employing establishment's premises at the time of her April 18, 1995 injury primarily to perform the employer's business.

Moreover, at the time of her April 18, 1995 injury, appellant had not actually gone to her work area. In the August 22, 1995 telephone conference with the Office, appellant stated that she usually went to her office on the sixth floor before going to the lobby for coffee and a newspaper, but that on April 18, 1995 she "got on the elevator and rode to the second floor, but decided to get off the elevator and walk to the coffee shop without putting her things away that

[3] *See Catherine Callen*, 47 ECAB ___ (Docket No. 94-351, issued November 24, 1995). (Coverage was afforded to a legal secretary injured six hours after her regular work hours ended, where she was on the employing establishment's premises to complete a work project.)

[4] *Timothy K. Burns*, 44 ECAB 125 (1992).

[5] *Joann Curtis*, 38 ECAB 122 (1986).

[6] *Clayton Varner*, 37 ECAB 248 (1985).

[7] *Nona J. Noel*, 36 ECAB 329 (1984).

day. … She entered the stairwell and said she was walking down some stairs on the second level when she slipped on a couple of banana peels that were on the steps."

At the time of her injury, appellant was not engaged in an activity contributing directly to the accomplishment of her assigned duties. While work-connected activity goes beyond the direct services performed for the employer and includes at least some ministration to the personal comfort and human wants of the employee, the personal comfort or ministration doctrine applies only to activities reasonably incidental to employment.[8] As appellant has not established that her injury occurred at a time when she may reasonably be said to have been engaged in her employer's business, her incidental activity of procuring coffee cannot be considered to be in the course of her employment. Appellant has not established that her injury was sustained in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated April 26, 1996 and October 31, 1995 are affirmed.

Dated, Washington, D.C.
October 22, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] *Conrad R. Debski*, 44 ECAB 381 (1993).