U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE C. BOWARD and DEPARTMENT OF HEALTH & HUMAN SERVICES, BUREAU OF PRIMARY HEALTH CARE, Bethesda, Md.

Docket No. 96-1971; Submitted on the Record;
Issued October 28, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an injury while in the performance of duty on March 6, 1996.

On March 6, 1996 appellant, then a secretary, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained an injury to her back when she stepped back and over the top median in a garage. Appellant stopped work on March 6, 1996. On the reverse of the Form CA-1, Jimmy R. Mitchell, appellant's supervisor, indicated that appellant's work schedule was from 7:00 a.m. until 3:00 p.m. Monday through Friday.[1] Mr. Mitchell further indicated that appellant was not injured in the performance of duty by placing a check mark in the box marked "no." Mr. Mitchell explained that appellant was on a lunch break in the parking garage.

By letter dated May 1, 1996, the Office of Workers' Compensation Programs advised the employing establishment to submit factual evidence regarding a description of the garage, and an explanation of appellant's presence in the garage and the activity that appellant was engaged in at the time of the incident. By letter of the same date, the Office advised appellant to submit additional factual evidence regarding the March 6, 1996 incident.

In an undated response, appellant stated that on March 6, 1996, she went to lunch at approximately 11:30 a.m.. Appellant also stated that after she finished her lunch break, she returned to work through the parking garage area and decided to clean her car windows before returning to her office area. She further stated that her car was parked in a handicap parking space on level B3 of the parking garage. Appellant stated that after she finished cleaning her back windows, she took approximately two steps backward to make sure that she had not missed any spots and fell over a concrete median. She explained that she did not see the median and landed flat on her back on the concrete floor of the parking garage. Appellant further explained that Debora Keenan, a coworker, witnessed her fall and immediately rendered assistance. She

[1] Mr. Mitchell also noted that appellant's work days varied with a compressed schedule.

explained that she told Ms. Keenan that she was not sure if she was okay, but returned to work although she was in severe pain. Appellant then explained that she could not locate the appropriate individuals to notify about the incident. She stated that, at approximately 3:00 p.m., she could not tolerate the pain any longer and called Dr. Arthur Horn, her treating physician. Appellant also stated that she informed Cheri Daley and Christy Brown, employees of the employing establishment, about the incident and that she was leaving to seek medical treatment from Dr. Horn based on his advice.

By decision dated May 30, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty on March 6, 1996. In an accompanying memorandum, the Office found that in washing her car windows, appellant was performing a personal task and that this activity was not incidental to appellant's employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of duty on March 6, 1996.

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of her duty.[3] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4] "Arising out of the employment" tests the causal connection between the employment and the injury; "arising in the course of employment" tests work connection as to time, place and activity.[5] For the purposes of determining entitlement to compensation under the Act, "arising in the course of employment," *i.e.*, performance of duty, must be established before "arising out of the employment," *i.e.*, causal relation, can be addressed.

As to the phrase "in the course of employment," the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and place of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after hours or at lunch time are compensable.[6]

In this case, appellant's fall occurred while she was on her lunch hour. Further, there is no dispute that the parking garage where appellant fell over the concrete median was on the employing establishment's premises.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Id.* at § 8102(a).

[4] *Bernard E. Blum*, 1 ECAB 1 (1947).

[5] *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[6] *Narbik A. Karamian*, 40 ECAB 617 (1989); *Annette Stonework*, 35 ECAB 306 (1983).

However, appellant's task of washing her car windows during her lunch break constitutes a task personal in nature inasmuch as appellant was not reasonably fulfilling the duties of her employment as a secretary. Further, appellant's task of washing her car windows cannot be likened to those incidental acts such as, using a toilet facility,[7] drinking of coffee and similar beverages, or the eating of a snack during recognized breaks in the daily work hours which are generally recognized as personal ministrations so that engaging in such activity does not take an employee out of the course of her employment.[8] The task of washing car windows is not considered an activity which is necessary for personal comfort, or personal ministration, and therefore is not incidental to appellant's employment.

The Board, therefore, finds that the back injury sustained by appellant on March 6, 1996 was not sustained while in the performance of duty, inasmuch as it did not arise in the course of her employment.

The May 30, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 28, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[7] *Frank M. Escalante*, 13 ECAB 160 (1961).

[8] *Helen L. Gunderson*, 7 ECAB 707 (1955).