

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE D. COCKERHAM and DEPARTMENT OF THE AIR FORCE,
49th CIVIL ENGINEERING SQUADRON, HOLLOMAN AIR FORCE BASE, N.M.

*Docket No. 96-1063; Submitted on the Record;
Issued September 21, 1998*

DECISION and ORDER

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

The issue is whether appellant was injured in the performance of duty on September 17, 1995.

On September 26, 1995 appellant, then a 52-year-old power support systems mechanic, filed a claim for left eye, right upper extremity and back injuries sustained in a motor vehicle collision on Sunday, September 17, 1995 at approximately 2:15 a.m. Appellant recalled that a truck "came across center line into [his] lane, causing collision. [Appellant's] vehicle rolled." Appellant stated that the accident occurred when he was "returning to TDY [temporary duty assignment] site after going home for emergency on the weekend."¹

An August 17, 1995 temporary-duty assignment order indicates that appellant was assigned to Sheppard Air Force Base in Wichita Falls, Texas, for 45 days beginning August 20, 1995, for the purpose of attending mechanical training. The order also indicates that appellant would be billeted at Sheppard Air Force Base.

In an October 5, 1995 letter, the employing establishment stated that at the time of the September 17, 1995 accident, appellant was on a 45-day temporary-duty assignment (TDY) to Sheppard Air Force Base in Wichita Falls, Texas. While on TDY, appellant "had to return home to Alamogordo, NM" on September 15, 1995 to when his wife notified him "that their water heater broke and was flooding their house." When appellant was unable to locate a plumber who

¹ Appellant submitted a September 17, 1995 emergency room report signed by Dr. Chris Smith, stating that appellant had been brought to the hospital at 3:55 a.m. by ambulance after a pickup truck entered appellant's lane, striking "the left side of his car at the windshield post causing the windshield to come loose and breaking the window on the left side." Dr. Smith diagnosed a left corneal laceration, abrasions of the left side of the face, and left knee and right shoulder pain. A September 17, 1995 civilian police accident report indicates the accident occurred at 2:15 a.m. in Brownfield, Texas, and that the driver of the truck that struck appellant's car was charged with DWI (driving while intoxicated). Dr. Douglas Dodson, appellant's family physician, held him off work through October 23, 1995. Appellant was released to light duty as of October 24, 1995.

would install a new water heater on a weekend, “it was necessary for him to go to Alamogordo to do it himself. He was returning to Sheppard AFB, TX in his private vehicle when the accident occurred at 2:15 a.m. on Sunday, Sep[tember] 17, 1995. The accident occurred near Brownfield, TX which is approximately 219 miles from Wichita Falls. (It is approximately 504 miles from Alamogordo, NM to Wichita Falls, TX.”

By decision dated November 22, 1995, the Office denied appellant’s claim on the grounds that the claimed September 17, 1995 injuries did not occur in the performance of duty. The Office found that appellant’s return to his home in Alamogordo on September 15, 1995 was “for a personal emergency,” and that the personal errand was “not reasonably incidental to the duties of the temporary-duty assignment,” thus removing him from the “protection of the Federal Employees’ Compensation Act and any injury occurring during these deviations [was] not compensable.”

The Board finds that appellant was not injured in the performance of duty.

An employee whose work entails travel away from the employer’s premises is held to be within the course of his or her employment continuously during the trip, except when a distinct departure on a personal errand is shown. The Board has recognized the rule that the Act covers an employee 24 hours a day when he or she is on travel status or on a temporary-duty assignment or a special mission and engaged in activities essential or incidental to such duties.

However, the fact that an employee is on travel status, a special mission or temporary duty does not raise an inference that the condition or injury claim occurred in the performance of duty.² When the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during these deviations is not compensable.³ Examples of such deviations are visits to relatives or friends while in official travel status.⁴

In the instant case, the employing establishment confirmed that appellant was sent to Sheppard Air Force Base in Wichita Falls, Texas for mechanical training, and that on the date of his injury he was considered to be in travel status. The employing establishment also indicated that appellant’s trip home to replace a hot water heater was not within the scope of appellant’s employment duties. There is no evidence that the employing establishment required that appellant return home.

The trip appellant made from his duty station in Wichita Falls, Texas to Alamogordo, New Mexico was not in pursuance of an activity directed by his employer, nor did his employment give rise to the necessity for that trip. The origin of appellant’s injury is found solely in his visit to Alamogordo, made for personal reasons to install a hot water heater in his

² *Richard Michael Landry*, 39 ECAB 232 (1987); *Garrett M. Levie*, 6 ECAB 94 (1953).

³ *Evelyn S. Ibarra*, 45 ECAB 840 (1994).

⁴ *Ethyl L. Evans*, 17 ECAB 346 (1966); *Miss Leo Ingram*, 9 ECAB 796 (1958).

home. The mere fact that appellant was on his way back to Wichita Falls, Texas when the accident occurred is insufficient to bring him under the protection of the Act.⁵ Appellant's trip to and from Alamogordo was in no way essential to or incidental to his attendance at the mechanical training in Wichita Falls, Texas so that the injuries sustained by him cannot be held to have occurred in the performance of duty.

Consequently, the Board finds that appellant's trip home to Alamogordo was not an activity "reasonably incidental to" appellant's employment and that therefore the injuries he sustained were not employment related.

The decision of the Office of Workers' Compensation Programs dated November 22, 1995 is hereby affirmed.

Dated, Washington, D.C.
September 21, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁵ *Charles G. Mestayer*, 32 ECAB 81 (1980); *see Miss Leo Ingram*, *supra* note 4.