U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THEDA F. KACZYNSKI and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

Docket No. 96-2656; Submitted on the Record;
Issued August 4, 1999

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 16, 1994.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on August 16, 1994.

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not attach merely upon the existence of an employee/employer relation.[1] Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[3]

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[1] *Christine Lawrence*, 36 ECAB 422, 423-24 (1985); *Minnie M. Heubner*, 2 ECAB 20, 24-25 (1948).

[2] *See* Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193.

[3] *Carmen B. Guitierrez*, 7 ECAB 58, 59 (1954).

In the present case, appellant alleged that she sustained injury to her back and shoulders on August 16, 1994 when her vehicle was hit from behind by another vehicle while she was traveling to her doctor's office to receive treatment for a prior employment injury, a back injury sustained at work on July 30, 1994.[4] By decision dated November 17, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that her alleged injury did not occur in the performance of duty and, by decisions dated October 12, 1995, March 1 and July 17, 1996, the Office denied modification of its November 17, 1994 decision.

As the Board has noted in *Bruce A. Henderson*,[5] Professor Larson, in his treatise on workers' compensation, states: "When an employee suffers additional injuries because of an accident in the course of a journey to a doctor's office occasioned by a compensable injury, the additional injuries are generally held compensable."[6] Larson notes exceptions to compensability, however, in such cases where there is "some added factor weakening the causal connection" such as doubt about whether the trip was really authorized, when the purpose of the trip was not treatment by a doctor but examination for purposes of meeting the employer's requirement of a physical fitness certificate and when the original injury was not work connected.[7] The Board notes that under the above principles set forth in Larson's treatise, a journey to a doctor's office occasioned by a compensable injury is covered under the Act.[8]

An employee who claims benefits under the Act has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[9] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.[10] An employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[11] However, an

[4] The Office accepted that appellant sustained an employment-related lumbar strain on July 30, 1994.

[5] 39 ECAB 692, 697-98 (1988).

[6] A. Larson, *The Law of Workers' Compensation*, Vol. 1, § 13.13 (1996).

[7] *Id.*

[8] *See Henderson*, *supra* note 5 at 697.

[9] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[10] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[11] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

The evidence establishes that on August 16, 1994 appellant had an appointment with her doctor for treatment of her July 30, 1994 employment injury. On her September 15, 1994 traumatic injury claim form, appellant listed the date of injury as August 16, 1994 and stated, "I was driving to my doctor who was treating me for an accepted work-related back injury when I was rear-ended." In a later statement, appellant indicated that she was going to the office of James D. Coleman, an attending Board-certified orthopedic surgeon, for treatment of her July 30, 1994 employment injury when the vehicular accident occurred. In an August 16, 1994 accident report, a police officer noted that appellant reported she was on the way to her doctor's office for treatment of a back injury.[13] The record contains an August 1, 1994 report of Dr. Coleman concerning treatment of appellant's July 30, 1994 employment injury with the following annotation made on August 16, 1994, "Broke appointment. Patient was in a car accident according to her son. She is at CMH (Charlton Memorial Hospital) and will call to reschedule.[14] Appellant consistently indicated that she had an appointment with her doctor on August 16, 1994 for treatment of her July 30, 1994 employment injury and the record does not contain sufficient factual inconsistencies and or other persuasive evidence to refute appellant's assertions in this regard.

The question therefore is whether the accident occurred while appellant was "in the course of a journey to a doctor's office" for treatment of an employment injury. The evidence reveals that the August 16, 1994 vehicular accident occurred at a location more than a dozen blocks from the direct route between appellant's house and Dr. Coleman's office.[15] Appellant explained this circumstance by indicating that she inadvertently missed her exit for the most direct route to Dr. Coleman's office and then took the first exit which would allow her to regain her route to Dr. Coleman's office. She noted that the vehicular accident occurred just after she regained her route to Dr. Coleman's office.

The Board has previously held with respect to business trips: "An identifiable deviation from a business trip for personal reasons takes the employee out of the course of his employment until he returns to the route of the business trip unless the deviation is so unsubstantial that it may be disregarded."[16] The Board has stated that the standard to be used in determining whether

[12] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[13] It appears that the police officer inadvertently attributed this statement to the driver of "Auto No. 2," *i.e.*, the driver of the vehicle which rear-ended appellant's vehicle. The police officer indicated that a female made the statement about going to the doctor in that he used the pronoun "she," but the driver of the vehicle which rear-ended appellant was male. The report indicates that the accident occurred at 1:10 p.m. on August 16, 1994.

[14] The annotation was made by a person with the apparent initials "LR" and the document was received by the Office on September 1, 1994.

[15] Annotated maps submitted by appellant and the employing establishment show different locations for Dr. Coleman's office, but it appears that both locations were in the general direction appellant was heading at the time of the accident.

[16] *See Henderson*, *supra* note 5 at 697-98.

an employee has deviated -- in addition to a person taking a "somewhat roundabout route" or not taking the most direct route between the place of origin and the point of destination -- it must be shown that the deviation was "aimed at reaching some specific personal objective."[17]

As noted above, there may be some cases in which an employee departs from the most direct route of a business trip and still would be considered in the performance of duty at the time of injury. However, it remains unclear from the record whether, from a temporal standpoint, appellant was actually in the course of a business trip at the time of the accident on August 16, 1994. Although appellant has established that she had a medical appointment with Dr. Coleman at some point on August 16, 1994 for treatment of an employment-related injury, the record does not contain any evidence establishing the time of appellant's appointment with Dr. Coleman on August 16, 1994. The Office specifically requested that appellant provide evidence regarding the time of her appointment on August 16, 1994, but appellant did not submit evidence identifying the time of the appointment.[18]

Appellant's accident occurred at approximately 1:10 p.m. on August 16, 1994 and, in the absence of evidence regarding the time of the August 16, 1994 appointment with Dr. Coleman, the Board is unable to determine whether, at the time of the accident, appellant was actually furthering the work purpose of traveling to a physician for treatment of a work-related injury or pursuing some personal objective. In the absence of such evidence, appellant did not show that she was "in the course of a journey to a doctor's office" for treatment of an employment injury at the time of her vehicular accident on August 16, 1994. Therefore, she did not meet her burden of proof to establish that she sustained an injury in the performance of duty on August 16, 1994.

[17] Larson, § 19.50; *Ronda J. Zabala*, 36 ECAB 166, 171 (1984).

[18] The record reflects that the first attorney to represent appellant directed Dr. Coleman's office to not release information regarding her August 16, 1994 appointment. The second attorney to represent appellant indicated that he contacted Dr. Coleman's office and was informed that the records regarding the appointment had been expunged from the computer system.

The decisions of the Office of Workers' Compensation Programs dated July 17, March 1, 1996 and October 12, 1995 are affirmed.

Dated, Washington, D.C.
August 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member