U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEAN SANDERS and U.S. POSTAL SERVICE, ALTURA POST OFFICE, Aurora, Colo.

Docket No. 97-1635; Submitted on the Record; Issued March 18, 1999

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 January 13, 1997 appellant, then a 49-year-old window clerk, had turned off the lights of her personal vehicle and was walking back to the employing establishment when she slipped on ice and fell, hitting her hip and knees. The employing establishment contended that appellant was not injured in the performance of duty. It indicated that appellant had clocked into work and then had gone back to her car without asking permission of her supervisor. It also stated that the parking lot appellant used was not owned or controlled by the employing establishment but was a common parking lot at a shopping center that was across an alleyway from the employing establishment. The employing establishment indicated that appellant slipped and fell in the alleyway.

In a March 4, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she was not injured in the performance of duty.

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

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The term "while in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workmen's compensation of "arising out of and in the course of employment." The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where she may reasonably be expected to be in connection with the

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[1] 5 U.S.C. § 8102(a).

employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefit is derived or an employment requirement gave rise to the injury.[2]

In this case, appellant was performing a personal errand, turning out the lights of her car, when she fell. This case is very similar to that of *Melvin Silver.*[3] In that case, appellant carried work-related material from his car, signed in, went back to the car to get his briefcase and slipped on an icy sidewalk and fell. The Board concluded that appellant, in returning to get his briefcase after signing in, was engaged in a personal errand and, as the sidewalk where the injury occurred was not part of the premises of the employing establishment, was not injured in the performance of duty. The nature of the commute to work and the dangers of the public street created the risk of harm to appellant, not his employment duties. The material he was bringing to work had been taken home for his own convenience and not at the direction of his supervisor. Therefore the fall in going to the car to retrieve the briefcase was not in the performance of duty.

In the instant case, appellant had not received her supervisor's permission to leave the employing establishment's premises to perform this errand. Therefore, she was not performing her employment duties at the time of the injury. The evidence submitted also showed that the parking lot and the alleyway where the fall occurred were not owned or controlled by the employing establishment. Appellant's fall, therefore, did not occur on the premises of the employing establishment where she would be expected to be after clocking in for work. For these reasons, appellant was not injured in the performance of duty.

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[2] *Charles Crawford*, 40 ECAB 474 (1989).

[3] 45 ECAB 677 (1994).

The decision of the Office of Workers' Compensation Programs, dated March 4, 1997, is hereby affirmed.

Dated, Washington, D.C.
March 18, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member