U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES N. ROGERS and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, NC

Docket No. 99-61; Submitted on the Record;
Issued May 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury on November 18, 1997 in the performance of duty.

On December 1, 1997 appellant, then a 55-year-old distribution clerk, filed a traumatic injury claim alleging that on November 18, 1997 he sustained a fracture of the left femur in the performance of duty. He related:

> "On November 18, 1997, I went to the [employing establishment] to make arrangements with my supervisor, Frank Sileo, for reasonable accommodation of my physical condition in order to return to work. Tommy Hall, manager, [employing establishment facility], informed me that, since Mr. Sileo was not available, that he was my supervisor. At about 7:45 a.m., Mr. Hall proceeded from his office to Mr. Sileo's office. I followed him on crutches. Approximately halfway between the two offices at a point between the … machine and the telephone desk, there were sacks of hanging orange bags. Some bags were loose on the floor at the base of the racks. My right crutch tip hit the orange bags on the floor [and] went out from under me. I fell."

In a letter dated December 12, 1997, an official with the employing establishment stated:

> "[Appellant] had been out of work due to a nonwork-related fractured femur. On November 18, 1997, he came to the [employing establishment facility] where he works, to inquire about light duty for a nonwork-related condition. [Appellant] came to [the facility] on his own accord. He was on crutches at the time of the visit. Employees on crutches, incidentally, are not allowed in mail processing work areas. He was on sick leave at the time of this visit."

The official with the employing establishment further noted that the manager of the facility "indicates there were no mail sacks on the floor in the area [appellant] fell."

By decision dated December 23, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not sustain an injury in the performance of duty.

By letter dated January 20, 1998, appellant requested a review of the written record by an Office hearing representative. Appellant related that he initially reported to work on November 14, 1997 to make modified work arrangements. He stated:

> "Dorothy Sellers, supervisor, assisted me on that date and never inform[ed] me that I could not be on the floor. The purpose again was to return to work that day on a modified work assignment.
>
> "Ms. Sellers informed me that [Mr.] Sileo, my immediate supervisor, was not at work and that she would contact me before the close of business. I heard nothing further from Ms. Sellers or Mr. Hall.…
>
> "I returned to the [employing establishment facility] on November 18, 1997 to see my supervisor, Mr. Sileo, to *return to work*. Mr. Hall informed me that my supervisor was not available and therefore he … was my supervisor. After discussing with [Mr.] Hall my request to return to work, he and I [were] on our way to Mr. Sileo's office as described on my CA-1" (Emphasis in original.)

Appellant disagreed with Mr. Hall's statement that there were no mail sacks on the floor where he fell and submitted statements from coworkers who indicated that several sacks were on the floor close to where appellant fell. Appellant further argued that "technically" he was not on sick leave because the proper forms were not filed until after November 18, 1997.

By decision dated May 29, 1998, the hearing representative affirmed the Office's December 23, 1997 decision.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on November 18, 1997.

The Federal Employees' Compensation Act[1] provides 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 phrase "sustained while in the performance of duty" 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." "In the course of employment" relates to the elements of time, place and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

business, at a place where he may reasonably be expected to be in connection with the employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[3] The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[5]

Although the injury in the instant case occurred on the employing establishment's premises, which is a place where appellant may reasonably be expected to be in connection with his employment, this alone is not sufficient for a finding that it was sustained "in the performance of duty" within the meaning of the Act.[6] The injury in this case was sustained while appellant was in sick leave status.[7] It therefore did not occur at a time appellant may reasonably be said to be engaged in the employing establishment's business.[8] In addition, appellant was not engaged in the duties he was employed to perform at the time of the injury, nor was he engaged in doing something incidental to them. Appellant argued that he came to the employing establishment ready to work on November 18, 1997 and therefore should be considered in the performance of duty. However, the employing establishment indicated that appellant came to the workplace of his own accord on the date in question to inquire about light-duty employment. Accordingly, the Board finds that appellant was not fulfilling the duties of his employment at the time of his injury and was not in the performance of duty.[9]

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

[4] *See Bettina M. Graf*, 47 ECAB 687 (1996).

[5] *See Eugene G. Chin*, 39 ECAB 598 (1988).

[6] *George A. Fenske, Jr.*, 11 ECAB 471 (1960).

[7] While the forms approving sick leave for the period of time including November 18, 1997 were not signed until after appellant's fall, the employing establishment indicated that appellant had been granted sick leave for his nonemployment-related injury at the time.

[8] *See Christine Lawrence*, 36 ECAB 422 (1985) (where the Board found that appellant was not entitled to compensation benefits for an injury sustained when she slipped on the lobby floor of the employing establishment because at the time of the injury appellant was on annual leave and had reported to the employing establishment for the unrequested purpose of informing her supervisor that she would be unable to work due to residuals of a prior work injury).

[9] *See Bettina M. Graf*, *supra* note 4.

The decisions of the Office of Workers' Compensation Programs dated May 29, 1998 and December 23, 1997 are hereby affirmed.

Dated, Washington, D.C.
May 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member