U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN M. BYRD and U.S. POSTAL SERVICE,
POST OFFICE, Hazelwood, MO

Docket No. 01-922; Submitted on the Record;
Issued July 19, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained injuries to his ankles, knees and his left eye in the performance of duty.

Appellant, a 26-year-old mailhandler, filed a claim for benefits on May 25, 1999, alleging that he was involved in an automobile accident on April 16, 1999 while in the performance of duty, resulting in injuries to his ankles, knees and his left eye.

In a letter dated June 29, 1999, the employing establishment controverted the claim, contending that the accident had occurred 15 minutes after the end of his overtime shift, which he had been assigned in order to make one last delivery. The employing establishment claimed that appellant had made the delivery and was driving home following the expiration of the overtime period when the accident occurred, which, therefore, did not occur while he was in the performance of duty.

By letter dated July 20, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional evidence to establish that he was engaged in an employment-related activity at the time of his accident.

In a memorandum of a telephone conference call dated July 20, 1999, appellant acknowledged that he was on his way home at the time of the accident, after having made the overtime delivery and that he was driving his own personal vehicle.

By decision dated August 25, 1999, the Office denied the claim, finding that appellant's automobile accident and resulting injuries were not sustained while he was in the performance of duty. The Office noted that the employing establishment had afforded appellant 90 minutes of overtime so that he could make one last delivery and found that the accident had occurred at 7:15 a.m. according to the police report. The Office noted that this was 15 minutes after the expiration of his allotted overtime, after he had made the delivery and appellant admitted he was on his way home at the time of the accident.

By letter dated September 24, 1999, appellant requested an oral hearing, which was held on March 20, 2000.

By decision dated June 16, 2000, an Office hearing representative affirmed the Office's August 25, 1999 decision. The hearing representative noted that appellant and his supervisor both testified at the hearing. The supervisor and appellant agreed that appellant had been allotted 90 minutes in overtime pay, which was more than necessary for a 30-mile drive, as compensation and a courtesy for making the last delivery. The hearing representative further noted that it was understood that, once appellant made this last delivery, he was on his way home and his work assignment had ended. The hearing representative, therefore, found that, at the time of his accident, appellant was not fulfilling the duties of his employment, but was on his way home after having completed his work assignment.

The Board finds that appellant's injury on April 16, 1999 was not sustained while in the performance of his federal employment.

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 or her employment. It is not sufficient under general principles of workers' compensation law to predicate liability merely upon the existence of an employee-employer relationship.[1] Congress has provided for the payment of compensation for disability or death resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[2]

> '"In the course of employment' deals with the work setting, the locale and the time of injury, whereas 'arising out of the employment' encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury. In the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while he is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment, or the risk is incidental to the employment or to the conditions under which the employment is performed."[3]

In addition, as a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are

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

[2] *Timothy K. Burns*, 44 ECAB 291 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Christine Lawrence*, 36 ECAB 422 (1985).

[3] *See Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954); *Harold Vandiver*, 4 ECAB 195 (1951).

not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[4]

The Board notes that appellant's injury occurred, not during lunch or during a recreation period as a regular incident of his employment, but after duty hours had ended. The Board has recognized that an employee on travel status or a temporary-duty assignment or special mission for his employer is under the protection of the Federal Employees' Compensation Act, 24 hours a day with respect to any injury that results from activities incidental to such duties.[5] When any person in authority directs an employee to run some errand or do some work outside his normal duties for the benefit of the employer, an injury in the course of that work is compensable.[6] 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 or special mission -- except when a distinct departure for a personal pursuit is shown. It is the Office's burden to show that such a deviation occurred.[7]

Appellant and his supervisor testified at the hearing that there was an unwritten understanding that appellant would be accorded 90 minutes in overtime pay when he made this particular run. This was done as a courtesy to appellant and as compensation for making the last delivery, even though this constituted more time and pay than was needed for the 30-mile delivery distance. However, at the time of injury, appellant was not engaged in the duties of his work with the employing establishment or in activities, which may be characterized as reasonably incidental to the conditions of her employment. The risk, giving rise to the injury in this case does not involve appellant's employment or conditions reasonably incidental thereto. It was understood by both the employing establishment and appellant that, once he made this last delivery, he would proceed home and his work assignment had ended. In addition, appellant acknowledged in his July 20, 1999 telephone call that he was on his way home at the time of the accident, after having completed the overtime delivery. The hearing representative, therefore, properly found that, at the time of his accident, appellant was not fulfilling the duties of his employment, but was on his way home after having completed his work assignment.

In the instant case, therefore, appellant had been on a special mission for his employer and as such was under the protection of the Act while engaged in activities essential to or reasonably incidental to his mission. However, after completing the overtime delivery, appellant's special mission was over and he returned to the ordinary commute to his home. There is no evidence that appellant's April 16, 1999 injury resulted from activities incidental to his employment, as review of the testimony and colored maps in the record, neither of which are in dispute, indicate that appellant was almost home, having nearly completed his normal route home. Thus, his accident occurred after duty hours, at a time when he was not actually engaged in an activity having a relationship to his official business.

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[4] *Randi H. Goldin*, 47 ECAB 708 (1996).

[5] *Richard Michael Landry*, 39 ECAB 232, 236 (1987).

[6] *See* Larson, *The Law of Workers' Compensation* § 27.04 (December 2000).

[7] *Michael J. Koll, Jr.*, 37 ECAB 340 (1986). In the present case, the Office met its burden by properly evaluating and analyzing the facts of the record.

As none of the requirements for bringing injuries occurring within the course of employment have been met, the injuries appellant sustained from his April 16, 1999 automobile accident must be found to arise from the ordinary hazards of his commute that are shared by all travelers.[8] Consequently, the injuries appellant sustained on April 16, 1999 were not causally related to the incidents of his employment.

Whether a particular case is or is not within the scope of the Act depends upon the general test of whether the particular risk may be said to be reasonably incidental to the employment, having in mind all relevant circumstances and the conditions under which the work is required to be performed.[9] The Board finds that, under the circumstances of this case, appellant was not engaged "in the course of his employment" at the time of his injury on April 16, 1999 and, therefore, his ankle, knee and eye injuries were not sustained while in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated June 16, 2000 is hereby affirmed.

Dated, Washington, DC
July 19, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] *See Samuel Curiale*, 48 ECAB 468 (1997).

[9] *Bernard D. Blum*, 1 ECAB 1 (1947).