

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN B. SHUTACK and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Arlington, VA

*Docket No. 02-2143; Submitted on the Record;
Issued January 8, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained an injury on June 30, 2000 in the performance of duty.

On July 14, 2000 appellant, then a 62-year-old mining engineer, filed a traumatic injury claim alleging that on June 30, 2000 he twisted his lower back when he "reached over to [the] file cabinet to retrieve [a] file." On the reverse side of the claim form, appellant's supervisor controverted the claim on the grounds that appellant was on leave at the time the incident occurred. The employing establishment submitted time and attendance records showing that appellant took compensatory time from June 25 to 30, 2000.

In a statement submitted in response to the Office's request for additional information, appellant related that he was working on a "high priority accountability project" on June 30, 2000. Appellant noted that he worked at home on flexiplace Wednesday through Friday. He stated:

"Because I was in the use/lose category with some compensatory time earned when working on a [h]oliday at a fatal accident scene, I submitted a leave slip to clear the time from my record. However, on many occasions, because of the nature of my position and responsibilities, while on approved leave, I am called upon to respond to work[-]related issues and assignments as needs arise and I have not changed payroll records.

"I was mainly working on the newly assigned high priority accountability project. In addition after submitting my T & A [time and attendance] for the week, I reviewed and processed timely Petitions for Modification submissions th[at] were pending."

By decision dated November 14, 2000, the Office denied appellant's claim on the grounds that he did not establish that he sustained an injury while in the performance of duty on

June 30, 2000. The Office found that the incident did not occur in the course of employment because he was on leave on June 30, 2000.

In a letter dated November 30, 2000, appellant requested a hearing before an Office hearing representative.

In a letter dated October 30, 2000, received by the Office on December 27, 2000, Cheryl S. McGill, appellant's supervisor, related that she told appellant to report to work on June 14, 2000 to discuss the status of a priority assignment. Ms. McGill further stated that appellant called in sick on June 14, 2000 and remained in a leave status until August 14, 2000. She also related that appellant scheduled his use of compensatory time from June 26 to 30, 2000 prior to becoming ill. Ms. McGill stated that, regarding appellant's contention that he worked on assignments beyond his duty hours, "this is simply not sanctioned or desired."

At the hearing, held on July 24, 2000, appellant related that he was working while on compensatory time June 30, 2000 when he twisted his back "reaching down for some papers on the floor." He stated that he kept submitting work and receiving assignments while on sick leave until October 6 or 7, 2000 when Susan Lee, a coworker who sent him assignments, was told to stop by Ms. McGill. Appellant stated that the employing establishment knew that he was working while on leave because he was not told to stop working until October 2000.

In a response dated August 31, 2001, Judith A. Mitchell, an official with the employing establishment, denied that the employing establishment knew about or sanctioned appellant working while on leave. She noted that appellant had never informed his supervisor that he would be working on that day and that the accountability review project had been reassigned to another staff person. Ms. Mitchell stated:

"[I]f [appellant] did in fact perform duties while on compensatory time as he has stated, he did not turn in any product resulting from that work. It is also important to note that [appellant] never informed his supervisor that he was working on that date or that he intended working on June 30, 2000. In fact, the accountability review project, which [appellant] states that he was working on at the time he hurt his back had been reassigned to another staff person."

Ms. Mitchell also related that the work Ms. Lee provided appellant would have been "routine assignments that she would send as part of his flexiplace agreement."

By decision dated May 20, 2002, the hearing representative affirmed the Office's November 14, 2000 decision after finding that appellant was not in the performance of duty at the time of his alleged June 30, 2000 back injury.

The Board finds that appellant has not established that he sustained an injury on June 30, 2000 in the performance of duty.

The Federal Employees' Compensation Act¹ 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 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

Appellant has alleged that he sustained an injury on June 30, 2000 while working at home. The Office's procedure manual includes a discussion of off-premises injuries sustained by workers who perform service at home.⁵ The procedure manual states:

"Ordinarily the protection of the [Act] does not extend to the employee's home, but there is an exception when the injury is sustained *while the employee is performing official duties*. In situations of this sort, the critical problem is to ascertain whether at the time of the injury the employee was, in fact, doing something for the employer. The official supervisor should be requested to submit a relevant statement showing: [Emphasis added.]

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
- (b) The particular work the employee was performing when injured; and
- (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion."⁶

In this case, appellant worked at home as part of a flexiplace program Wednesday through Friday. Appellant, however, was not scheduled to work at the time of his alleged injury on June 30, 2000 but instead was on scheduled leave in the form of compensatory time. The

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8102(a).

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

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

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f) (August 1992).

⁶ *Id.*

incident, therefore, did not occur at a time when appellant may reasonably be said to have been

engaged in the employing establishment's business.⁷ In addition, there is no evidence that appellant was engaged in the duties he was employed to perform at the time of the alleged injury or doing something incidental to his duties. Appellant's supervisor stated that working on assignments outside of duty hours was "not sanctioned or desired." An official with the employing establishment denied knowledge that appellant was working while in a leave status. She further indicated that he had not produced any work product from his claimed work hours on June 30, 2000. The official further noted that the project that appellant claimed that he was working on when injured had been reassigned to a coworker. Appellant, therefore, failed to show that his injury occurred at a time when he might reasonably be expected to be performing his official duties and thus the Office properly denied his claim on the grounds that his injury did not occur in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated May 20, 2002 is affirmed.

Dated, Washington, DC
January 8, 2003

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ See *Christine Lawrence*, 36 ECAB 422, 424 (1985) (where the Board found that appellant was not entitled to compensation benefits for an injury sustained when she slipped on the employing establishment lobby floor because at the time of the injury appellant was on annual leave and had reported to the employing establishment for the purpose of informing her supervisor that she would be unable to work due to residuals of a prior work injury).