United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 09-2278**
	)	**Issued: September 27, 2010**
DEPARTMENT OF THE ARMY, OFFICE OF THE CHIEF OF STAFF, Arlington, VA, Employer	)	

Appearances:
John Durkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2009 appellant, through her attorney, filed a timely appeal from an April 8, 2009 merit decision of the Office of Workers' Compensation Programs finding that she sustained an injury on February 20, 2005 in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on February 20, 2005 in the performance of duty.

On appeal, appellant contends that she was on vacation and not on travel status at the time of the injury.

FACTUAL HISTORY

On December 7, 2007 appellant, then a 51-year-old budget execution chief, filed a traumatic injury claim alleging that on February 20, 2005 she sustained injury to her right leg,

hip and buttocks when she fell while going through secondary screening at the Seattle-Tacoma International Airport (SeaTac). She related that a transportation screener moved a chair while she was being screened and then asked her to sit down, at which point she fell to the floor. Appellant asserted that she was not in the performance of duty at the time of her injury and that she filed a compensation claim to comply with an order of the United States District Court for the Western District of Washington.[1]

A travel voucher shows appellant's itinerary as flying from the Narita Airport in Japan to Atlanta, Georgia, from Atlanta to Seattle, Washington and from Seattle to Narita, Japan.

By letter dated February 8, 2008, Jeffrey C. Sullivan, U.S. Attorney and Priscilla T. Chan, Assistant U.S. Attorney argued on behalf of the U.S. Government that appellant was covered under the Federal Employees' Compensation Act. Counsel noted that she flew from Japan to Atlanta, Georgia for a business conference. Appellant stopped in Seattle, Washington on her way back to Japan for nonemployment-related purposes. On February 20, 2005 she went to the Seattle airport to fly back to her duty station in Japan. The U.S. Attorney's Office argued that appellant was in the performance of duty at the time of the February 20, 2005 injury "because at the time the accident occurred, she had completed her personal business and resumed her travel back to her duty station…. Indeed once [appellant] departed for the airport on the morning of Sunday, February 20, 2005 and certainly by the time she was passing through the [Transportation Security Administration] checkpoint, she had regained her route back to her duty station." It noted that the federal employer paid for her return trip to Japan.

In answers to interrogatories dated September 18, 2007, appellant related that she worked in Japan at the time of the February 20, 2005 injury. On February 16, 2005 she traveled from Japan to Atlanta, Georgia for a business conference. Appellant took leave to travel to Tacoma, Washington before returning to Japan. She stated, "My purpose for my trip to Japan on February 20, 2005 was to return to my duty station."

By decision dated February 21, 2008, the Office denied appellant's claim after finding that the medical evidence was insufficient to establish that she sustained an injury causally related to the accepted work incident. It determined that she was in the performance of duty at the time of the February 20, 2005 incident, as her deviation from duty to Seattle ceased when she entered the airport for her return flight to Japan.

On March 19, 2008 appellant requested an oral hearing.

In a June 19, 2007 deposition, appellant related that she attended a business conference in Atlanta from February 13 to 16, 2005. She took leave to fly to Seattle on February 16, 2005 to purchase a motor vehicle. Appellant left a friend's house on February 20, 2005 to go the Seattle

[1] By order dated October 31, 2007, the U.S. District Court, Western District of Washington, found it was without subject matter jurisdiction over appellant's claim filed under the Federal Tort Claims Act. Her action in U.S. District Court was stayed pending a determination of coverage under the Federal Employees' Compensation Act.

airport. The employer paid her the cost of the airfare from Japan to Atlanta and return and she paid the difference for the extra stop in Seattle.[2]

In a declaration to the U.S. District Court, appellant related that she had scheduled a flight to Japan on February 20, 2005 in order to return to her work station. At the security checkpoint, a Transportation Security Administration (TSA) employee told her to sit in a chair to be searched with a wand. The TSA employee then told appellant to stand. The employee walked behind her and then told her to sit again. Appellant sat down not knowing that the TSA employee had moved the chair. She fell down to the ground and injured her right elbow, lower back and right hip.

On March 20, 2008 appellant's attorney argued that her trip to Seattle was a deviation from her work duties. He noted that the employing establishment did not pay for her flight, lodging or transportation while in Seattle or derive any significant benefit from her presence in the State of Washington. Counsel argued that the "most direct route to [appellant's] employment destination would not have been regained until [her] flight from SeaTac to Japan intersected with the most direct commercial flight path one could take from Atlanta to Japan. Wherever that point would be located, it certainly would not have been in the security screening facility of the SeaTac Airport."

A telephonic hearing was held on July 30, 2008. Appellant argued that as she was on leave at the time of her injury she was not in the performance of duty. She related that, before her trip to the business conference, she asked her employer to change her route back so she could fly to Seattle and purchase a vehicle. Appellant used leave on Thursday, February 17 and Friday, 18, 2005. She received expenses from February 13 to 17, 2005. Appellant related that her travel voucher summary had a starting date of February 13, 2005 and an ending date of February 17, 2005 and leave usage from February 18 to 28, 2005. The employing establishment paid for her flight back to Japan, but she believed that she had paid any difference for her extra stop in Seattle.[3] Appellant claimed she was not in the performance of duty on February 20, 2005 as she did not receive compensation or, if she was on the job, any deviation for personal leave had not ended.

By decision dated April 8, 2009, the hearing representative reversed the February 21, 2008 decision and accepted appellant's claim for a right elbow contusion, right gluteus contusion, dorsal sprain/strain and lumbar sprain. She found that appellant was in the performance of duty as she had returned to her employment at the time she reached the Seattle airport to return to Japan.

On appeal, appellant's attorney argued that appellant was not in travel status at the time of her February 20, 2005 injury as she was on vacation in Washington State. He noted that she

[2] After the injury, appellant was taken to the hospital and she remained in Seattle for an additional seven days. Her flight back to Japan was on February 27, 2005. Due to her injuries, she used her frequent flier miles on United to upgrade her seat to Business Class. Appellant claimed reimbursement from her employer for that upgrade, equivalent to $1,600.00.

[3] Her attorney noted that there was no evidence showing that she paid for the difference in cost.

had fixed hours and place of work, was not scheduled to work that day, was not compensated for her time and was not performing work duties. Counsel advised that she had taken leave on Friday, February 18, 2005 and was not required to use leave for weekends. He indicated that the employing establishment "paid an amount equivalent to the cost of a round-trip ticket between Japan and Atlanta," but that appellant was required to pay the difference. Counsel asserted that appellant was not in travel status on Sunday, February 20, 2005 but "merely returning to her residence in Japan from her weekend in Washington."[4] He contended that, even if she was in travel status, she was on a personal deviation when injured and the deviation had not ended by the time of the injury. Counsel contended that appellant was on a deviation until she resumed the most direct route to arrive at her work station, which would "not have been regained until [appellant's] flight from SeaTac to Japan intersected with the most direct commercial flight path one could take from Atlanta to Japan."

LEGAL PRECEDENT

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

> "Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.[5]"

The Board has similarly recognized that the Federal Employees' Compensation Act covers an employee 24 hours a day when the employee is on travel status and engaged in activities essential or incidental to such duties.[6] When the employee, however, deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during such deviation is not compensable.[7] An identifiable deviation from a business trip for personal reasons takes the employee out of the course of her employment until she returns to the route of the business trip unless the deviation is so insubstantial that it may be disregarded.[8] The general

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[4] Counsel noted that appellant did not request leave after February 18, 2005 until subsequent to the February 20, 2005 incident.

[5] *Larson, The Law of Workers' Compensation*, § 25.01 (2009); *see also Susan A. Filkins*, 57 ECAB 630 (2006); *Lawrence J. Kolodzi*, 44 ECAB 818 (1993).

[6] *See Ann P. Drennan*, 47 ECAB 750 91996); *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein.

[7] *Id*.

[8] *James E. Johnson*, 33 ECAB 695 (1984).

rule is that, once a personal deviation has been completed and the main business route resumed, an employee is once again in the performance of duty.[9]

ANALYSIS

Appellant appeals the Office's determination that she was in the performance of duty on February 20, 2005 when she fell while going through secondary screening at the SeaTac airport. The initial question to determine is her work status on February 20, 2005. It is not disputed that she flew from her duty station in Japan on February 13, 2005 to Atlanta for a business conference. Appellant took leave beginning February 17, 2005 to fly to Seattle for personal reasons. She arrived at the Seattle airport on February 20, 2005 to return to her duty station in Japan. The employing establishment paid for her airfare going from Japan to Atlanta and returning from Seattle to Japan. The Board finds that appellant had resumed her business trip on February 20, 2005 when she entered security for her return trip to her employment in Tokyo. There is no dispute that the flight was paid by the employer.

As a traveling employee, appellant is normally covered for activity reasonably incidental to the employment. However, it is a well-recognized rule that "a deviation for a personal errand will take an employee out of coverage." The personal errand is complete when the employee reaches a location that is consistent with a reasonably incidental activity of a traveling employee."[10] In this case, appellant clearly deviated from her work trip for personal reasons when she flew from Georgia to Seattle to visit friends and to purchase a motor vehicle in anticipation of a future move to the area. Her personal trip to Seattle was a deviation that took her out of coverage of the Act. The trip to Seattle from Atlanta cannot be considered an insubstantial deviation that would not remove an employee from the course of employment.[11]

The issue is whether appellant had completed her deviation and resumed her business route at the time of her fall on February 20, 2005. Generally, once a personal deviation has been completed and the main business route resumed, an employee is once again in the performance of duty.[12] As noted, the deviation is complete when the employee reaches a location that is consistent with a reasonably incidental activity of a traveling employee.[13] In some cases, it is logical to look at the actual route an employee would be taking from the personal deviation to return to the official business travel. The Board thus carefully examines the facts of each case to determine whether a clear finding can be made that the deviation has ended.

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[9] *William T. Bodily*, 52 ECAB 509 (2001); *A. Larson, The Law of Workers' Compensation* § 19.32.

[10] *See Gayle E. Bowling*, 56 ECAB 416, 419 (2005).

[11] Insubstantial deviations are "largely the kind of momentary diversions which, if undertaken by an inside employee working under fixed time and place limitations, would be compensable under the personal comfort doctrine." *A. Larson, The Law of Workers' Compensation* § 19.63.

[12] *Amy Ureel (Michael Ureel)*, 51 ECAB 260 (1999); *Katherine A. Kirtos*, 42 ECAB 160 (1990); A. Larson, *The Law of Workers' Compensation* § 19.32.

[13] *See Gayle E .Bowling*, *supra* note 10; *Amy Ureel (Michael Ureel)*, *supra* note 12.

In *William T. Bodily*,[14] the employee was on travel status and was planning to go out for dinner. During the course of the evening and sometime after dinner, the employee was robbed at gunpoint. At the time of the robbery, he was away from his hotel and the circumstances surrounding the robbery were very vague. Mr. Bodily claimed that he was injured traveling toward his hotel after completing any deviation but the Board found that the deviation did not cease until the police arrived to drive him back to his hotel. In *Kathleen M. Fava (John R. Malley)*,[15] the Board found that the Office properly rescinded acceptance of his claim where the evidence reflected that the employee who was in travel status was injured when he went to a sports bar. The Board found that the injury occurred before he had completed the deviation. Later evidence suggested that further injuries may have occurred after appellant had returned to the employing establishment's facility and the Board remanded that aspect of the case for further development. In *Gayle E. Bowling*,[16] the employing establishment instructed the employee, who was traveling between two work locations, to go home for lunch. She detoured while driving home to go to a toy store. On her way from the toy store to her residence, she was injured in a motor vehicle accident. The Board found that the employee was not in the performance of duty because she had not regained the most direct route from her work station to her home. Therefore, it could not be determined whether the deviation had ended rendering the injury a nonwork-related injury.

A similar factual pattern has been reviewed by other courts. In *Webb v. North Side Amusement Company*, an employee was engaged in a business trip that took him and others from Pennsylvania to New York and back. On the return trip from New York, however, the employee spent several days in Atlantic City, New Jersey. The employee's death on his way from Atlantic City to Pennsylvania was considered business related as it was held that he had resumed his final stage of the business trip. The court noted that "[t]he homeward trip was a necessary part of the business excursion and since there is nothing in the facts here presented indicating . . . that the journey home be otherwise than the final step of the business expedition, we have been shown no reason which would require the finders of facts to interpret it as a continuation of the recreational deviation to Atlantic City."[17]

Similarly, the Board finds that appellant had completed her personal deviation, had reached a location that is consistent with a reasonably incidental activity of a traveling employee and had begun her homeward trip. She returned to the airport and was clearing security at the time of her February 20, 2005 injury. Appellant finished her personal errands in Seattle and was preparing to board an airplane to fly back to her duty station in Japan. In fact, she noted in her interrogatories that: "My purpose for my trip to Japan on February 20, 2005 was to return to my duty station."

The employing establishment arranged and paid for appellant's flight from Seattle to Japan. Her actions in going through security in order to board an airplane to travel back to her

[14] 52 ECAB 509, 514-15 (2001).

[15] 49 ECAB 519 (1998).

[16] *See supra* note 9.

[17] *Larson*, at § 17.04, citing to *Webb v. North Side Amusement Company*, 298 Pa. 58 (1929).

duty station from a business trip were reasonably incidental to her employment. Thus, appellant's personal deviation had ended and her official travel had resumed. Accordingly, her injury occurred in the performance of duty.

On appeal, appellant's attorney argues that she was not on travel status as she was on vacation in Washington State. He asserts that she encountered an ordinary, nonemployment-related hazard. As discussed by the Board, however, the employing establishment sent appellant on a business trip and her trip back to the employing establishment is a necessary part of her official travel. As the Board has noted, the absence of payments is not dispositive in determining coverage under the Act.[18]

Counsel further contends that, if appellant was on travel status, she had deviated from employment. He cites Board cases such as *Richard Michael Landry*,[19] where the employee, who was on a temporary duty assignment, was injured when he was ejected from the back of a pick up truck at 4:00 a.m. and *Trina Bornejko*,[20] where the employee, who was on travel status, was injured dropping her child off at school before leaving on her trip. Counsel also cited *Janet Kidd (James Kidd)*,[21] where an employee on travel died while visiting his son at a restaurant 150 miles from his work location. In those cases, however, the Board determined that the employees had deviated from the normal incidents of the business trip or temporary duty assignment and that the deviation had not ceased at the time of the injury. In this present case, the Board finds that appellant's deviation ceased. In going through security at the airport to return to her duty station, she was performing a normal activity reasonably incidental to her travel assignment and contemplated by the employer.

Appellant's attorney also cites *George D. Cockerham*,[22] where an employee was injured driving back to his temporary duty assignment after he returned home to replace a hot water heater. In *Cockerham*, however, the employing establishment did not instruct the employee to return home to replace the hot water heater or pay for his trip; consequently, it is distinguishable from the present case.

Counsel maintains that the Board would have to reverse its holding in *Barbara Stamey*[23] to find that appellant was in the performance of duty. In *Stamey* the Board found that an employee injured while driving from a morning church meeting purportedly to a business meeting was not in the performance of duty. The Board rejected the concept that an employee moving back toward his employment route had ceased a deviation. Rather it denied coverage as

[18] *A.W.*, Docket No. 08-306 (issued July 1, 2008).

[19] 39 ECAB 232 (1987).

[20] 53 ECAB 400 (2002).

[21] 47 ECAB 670 (1996).

[22] 49 ECAB 678 (1998).

[23] 32 ECAB 1767, 1771 (1981).

it was not clear that the employee had completed the deviation at the time of the accident.[24] Appellant's attorney argues that in the case herein appellant would not have regained the most direct route to her destination until her flight from Seattle to Japan intersected at a point with a flight from Atlanta to Japan. As discussed, however, the Board finds that her deviation ceased once she entered the airport. The most direct path back from Seattle to Japan is by the SeaTac airport and her return trip to Japan was contemplated and paid for by the employing establishment. It is neither reasonable nor practical to base a determination of coverage on a point of intersection in the air.

CONCLUSION

The Board finds that appellant sustained an injury on February 20, 2005 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 8, 2009 is affirmed.

Issued: September 27, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[24] Counsel further cites the previously discussed cases of *Fava and Bodily* to show that appellant had not resumed her main business route at the time of injury.