

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTOINE B. BISSONETTE and DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICES & HOSPITALS, Rapid City, S.D.

*Docket No. 96-1300; Submitted on the Record;  
Issued July 8, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant's claimed injury arose in the performance of duty.

In its December 20, 1994 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence failed to demonstrate that claimed injury occurred in the performance of duty. Specifically, the Office found that, when the alleged injury occurred, appellant was not performing his usual work duties nor was he at his official work station. Appellant was assigned to work in the dental facility of the hospital complex, and the alleged injury – a shoulder separation from bumping into his supervisor – occurred about a block away on the first floor of the hospital itself in the dietary section. The Office noted that appellant had no authorization to be in another building.

In a merit decision dated August 14, 1995, the Office denied modification of its prior decision. The Office noted that being on the workplace premises did not necessarily put appellant in the performance of duty. He was not in his usual workplace, the Office observed, and there was no information to support that he was directed to the dietary section.

The Office received a statement from a security guard who explained appellant's presence in the hospital building. He stated that around 4:30 p.m. on the day in question he was by appellant's side helping him to locate his keys for his job site: "I feel [appellant] was on duty and was doing a normal procedure [in] trying to locate his keys for his work site. His intention was to get his keys and start his regular duties as a house-keeper at the dental office."

In a decision dated December 1, 1995, the Office denied a merit review of appellant's claim. The Office noted in its limited review that appellant was not at his place of duty, "which is the main reason his claim was denied," and that the statement of the security guard only supported that appellant was at the kitchen area.

The Board finds that appellant has not met his burden of proof to establish that the claimed injury arose in the performance of duty.

The Federal Employees' Compensation Act<sup>1</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> 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 performance."<sup>3</sup> "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place where he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. 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.<sup>4</sup>

The record establishes that the claimed injury arose during appellant's regular work hours.<sup>5</sup> The record also establishes that the claimed injury arose on the premises of the employing establishment. The Board finds, however, that the evidence of record is insufficient to establish the activity element of work connection, that is, whether the claimed injury occurred while appellant was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.

Appellant's supervisor, Dr. Bond, stated that there was no reason within the realm of his work responsibilities for appellant to be in the dietary section of the hospital. The record contains no statement from appellant pertaining either to his arrival at work on the day in question or to his presence in the dietary section of the hospital at the time of the incident to which he attributes his injury. For this reason, the Board finds that the record on appeal contains insufficient evidence to establish whether the claimed injury occurred while appellant was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. Appellant, therefore, has not met his burden of proof.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* § 8102(a).

<sup>3</sup> This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>4</sup> See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

<sup>5</sup> Appellant's regular workday began at 3:30 p.m. The injury claimed occurred at 4:45 p.m. Although a witness stated that appellant was attempting to locate the keys to his work site at about 4:30 p.m., there is no evidence to establish whether appellant arrived at work about an hour late that day or whether he arrived at his usual starting time and spent an hour engaged in other activities.

The August 14, 1995 decision of the Office of Workers' Compensation Programs is affirmed.<sup>6</sup>

Dated, Washington, D.C.  
July 8, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> Because the Board has conducted a merit review of appellant's claim, the issue of whether the Office properly denied a merit review in its December 1, 1995 decision is moot.