U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT L. YOUNG and U.S. POSTAL SERVICE,
POST OFFICE, Palatine, Ill.

Docket No. 97-2130; Submitted on the Record;
Issued June 25, 1999

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury in the performance of duty.

The Board has duly reviewed the case record and concludes that appellant has not established that she sustained an injury in the performance of duty.

On February 5, 1996 appellant, then a 54-year-old letter carrier, filed a claim, alleging that he sustained a broken left wrist, black eye and broken glasses on January 29, 1996 when he slipped on ice and fell while going around the block to get his car after work. Appellant stopped work on January 30, 1996 and returned to work on February 2, 1996. The record indicates that his regular work hours were from 10:30 a.m. to 6:30 p.m. In a statement received by the Office of Workers' Compensation Programs dated February 12, 1996, appellant indicated that he went out by the north gate, turned left and cut between buildings going east and that he slipped and fell when he was almost to the front of the Tucker Auto Building. Appellant also drew a diagram which indicated where he fell which was not on postal property and one-half block away from the parking area.

In a letter dated February 10, 1996, John Gattuso, Supervisor, Customer Services, indicated that while appellant was walking back through the dock area he should have asked someone to unlock the back gate for him. Mr. Gattuso also noted that the parking lot that appellant went through was lit and icy and not postal property. Appellant also failed to return to report his injury.

A memorandum of telephone conference dated March 12, 1996, between the Office claims examiner and the employing establishment, indicates the injury occurred on nonindustrial premises, a public street that was not controlled by the employing establishment or the federal government.

By decision dated April 1, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. In the attached memorandum, the Office indicated that, as the injury took place off premises and not an area in which the employing establishment had control or jurisdiction, it was not compensable.

In an undated letter received by the Office on June 5, 1996 appellant, through a representative, requested reconsideration of the Office's decision. Along with his request appellant submitted a copy of "clock rings" for other employees working on the date of the alleged injury.

By letter dated September 3, 1996, the Office requested additional information regarding the "clock rings" from the employing establishment and appellant.

In a letter dated September 13, 1996, appellant's representative informed the Office that appellant required extra time to do his rounds due to the snow and ice storm and that appellant did not report the accident to a supervisor because all the supervisors had left for the night. Also present were handwritten statements from two employees addressing the condition of the pedestrian gate at the rear of the north parking lot.

By decision dated February 13, 1997, the Office found the evidence insufficient to establish that appellant had sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

In this case, appellant has submitted sufficient evidence to establish that the incident occurred on January 29, 1996 as alleged. In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the

[1] 5 U.S.C. §§ 8101-8193

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment itself, or the conditions under which it is required to be performed and the resultant injury.[7]

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 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.[8] This rule also applies where an employee is leaving his or her permanent duty station after work and is injured in an area adjacent to the federal building where he or she worked, but which is not owned or controlled by the federal government.[9] Exceptions to the general rule have been made in order to protect activities that are so closely related to the employment itself as to be incidental thereto,[10] or which are in the nature of necessary personal comfort or ministration.[11]

In defining what constitutes the premises of an employing establishment, the Board has stated:

> "The 'premises' of the employer, as the term is used in work[ers'] compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of legal title."[12]

The record in this case establishes that appellant was leaving work at the time of the injury. Thus, unless his injury occurred on the actual or constructive premises of the employing establishment, his injury cannot be considered as sustained in the performance of duty.[13] Although appellant was attempting to get his car which was parked in a postal parking lot, the record establishes that the area on which appellant fell is neither owned nor controlled by the

[7] *Conrad F. Vogel*, 47 ECAB 358 (1996); *Julian C. Tucker*, 38 ECAB 271, 272 (1986)

[8] *See Jimmie D. Harris, Sr.*, 44 ECAB 997, 1001-02 (1993); *Mary Keszler*, 38 ECAB 735, 739-40 (1987).

[9] *Vincent Siderine*, 35 ECAB 304 (1983).

[10] The Board has stated that these exceptions are dependent upon the particular facts and related situations: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer." *Melvin Silver*, 45 ECAB 677, 681 (1994); *Betty R. Rutherford*, 40 ECAB 496, 498-99 (1989).

[11] *See, e.g., Harris Cohen*, 8 ECAB 457, 457-58 (1955) (accident occurred while the employee was obtaining coffee); *Abraham Katz*, 6 ECAB 218, 218-19 (1953) (accident occurred while the employee was on the way to the lavatory).

[12] *Hope J. Kahler (Roger A. Kahler)*, 39 ECAB 588, 595 (1987); *Dollie J. Braxton*, 37 ECAB 186, 188-89 (1985).

[13] *See Sallie B. Wynecoff*, 39 ECAB 186 (1987).

employing establishment.[14] Consequently, appellant has not shown that the sidewalk formed part of the actual premises of the employing establishment.

Furthermore, under the facts of this case, it also cannot be said that appellant's injury occurred on the constructive premises of the employing establishment. The Board has determined that under special circumstances the employment premises are constructively extended to hazardous conditions which are proximately located to the premises and, therefore, may be considered as hazards of the employing establishment.[15] Here, the record indicates that the employing establishment did not own and was not responsible for maintenance of the scene of the accident. The record also indicates that appellant could have requested that someone open the gate for him which would have given him access to the parking lot where his car was parked. Thus, appellant's injury is considered an ordinary, nonemployment hazard of the journey itself, which is shared by all travelers.[16] Consequently, appellant has failed to establish that she sustained an injury in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated February 13, 1997 is affirmed.

Dated, Washington, D.C.
June 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[14] *See Vincent Siderine, supra* note 9.

[15] *See Melvin Silver, supra* note 10.

[16] *See Anne R. Rebeck*, 33 ECAB 315 (1980); *Gloria C. Adalian*, 26 ECAB 131 (1974).