U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN CEPEC and U.S. POSTAL SERVICE,
POST OFFICE, Brook Park, OH

Docket No. 00-346; Submitted on the Record;
Issued December 7, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant's left wrist injury on May 19, 1999 arose in the performance of duty; and (2) whether the injury was caused by her willful misconduct.

On May 19, 1999 appellant a letter carrier, filed a claim asserting that she injured her left wrist that day when her postal vehicle was involved in a traffic accident. The employing establishment confirmed that the injury occurred during working hours but asserted that appellant had deviated from her established line of travel. Route adjustments were soon to go into effect and appellant, who had just made her last delivery, decided to check out a new street on her future route before returning to the station. The street was no more than two blocks from her current route. As she drove down the street, she counted houses and tried to find a good place to park her vehicle when the new route began. She had no other reason to be where she was. It was on this street that a collision occurred at an intersection.

In a decision dated July 22, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed injury occurred in the performance of duty. The Office found that after making her last delivery appellant should have proceeded directly back to the station via the normal line of travel, which the Office identified as Holland to Smith to Snow. Instead, on her own volition and with clear knowledge that she was breaking postal rules, appellant decided to deviate from her route in order to check out her future delivery zone. The Office noted that appellant was heading back to the station and was crossing the normal line of travel when the accident occurred. The Office found, however, that this was insufficient to establish compensability as appellant had deliberately violated a known rule and intentionally deviated from her route without permission. The Office found that the deviation was for personal reasons. Her presence in the area was not a condition of her employment, was not required and was not needed to prepare her for her future assignment. The Office further found that appellant's willful misconduct led to the injury.

The Board finds that appellant's injury arose in the course of her employment.

Section 8102(a) of the Federal Employees' Compensation Act (Act) provides as follows:

> "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is --
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> (1) caused by willful misconduct of the employee;
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> (2) caused by the employee's intention to bring about the injury or death of himself or of another; or
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> (3) proximately caused by the intoxication of the injured employee."[1]

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."[2] "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 her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3]

In this case, the time element of work connection is not in dispute; the accident occurred during appellant's work hours. The issue is whether the place and activity elements of work connection are also satisfied.

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity, in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or whether it represents such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[4] The standard to be used in determining whether an employee has deviated is that, in addition to a person taking a "somewhat roundabout route" or not taking the most direct route between the place of origin and the point of destination, it must be shown that the deviation was "aimed at reaching some specific personal objective."[5]

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[1] 5 U.S.C. § 8102(a).

[2] 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).

[3] 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. *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] *Thomas E. Keplinger*, 46 ECAB 699, 706 (1995).

[5] *Ronda J. Zabala*, 36 ECAB 166, 171 (1984).

In *Dannie G. Frezzell*,[6] the employee, a letter carrier, was injured in an automobile accident while returning to the employing establishment from her postal route. The Board noted that although the location of the accident was four blocks from her authorized route, the evidence established that the employee had not deviated for some specific personal reason. Rather, due to traffic on the assigned route, the employee made a deviation and subsequently followed this route, which was found to be no less direct than the assigned route. The employee's accident was in the performance of duty.[7]

In *Louis J. Barbera*,[8] the employee, also a letter carrier, completed his deliveries in one part of town and then drove to his home in the opposite direction to speak with his wife. To reach his house, it was necessary that he pass near the employing establishment and travel several miles beyond it. After leaving his house, the employee sustained an injury while driving on his return trip to the employing establishment. The Board found that, at the time of his accident, the employee had not returned to the ambit of his employment.[9]

In the present case, it is not established that appellant's deviation from the normal line of travel was aimed at reaching some specific personal objective. Following her last delivery of the day, appellant decided to check out the new street on her future route, to count the houses and to find a good place to park her vehicle when the new route began. However, unnecessary or even prohibited this conduct may have been,[10] however, poor her judgment, the purpose of appellant's conduct was unquestionably related to work. Her departure from the normal line of travel was not such that she can fairly be said to have engaged in personal activities unrelated to her employment. The Board, therefore, finds that her injury on May 19, 1999 arose in the course of her employment.

In its July 22, 1999 decision, the Office found that appellant's willful misconduct led to the injury. As the Board noted above, section 8102(a) of the Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty, unless the injury or death is caused by the willful misconduct of the employee, or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the employee is the proximate cause of the injury or

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[6] 40 ECAB 1291 (1989).

[7] *Compare Norman R. Hemby*, 40 ECAB 901 (1989) (coverage denied where the employee was in an automobile accident 10 blocks from his designated route and while he was proceeding away from his specified route on a side trip for personal reasons).

[8] 18 ECAB 47 (1966).

[9] *Accord Ronda J. Zabala, supra* note 5 (the employee made an identifiable deviation to take her daughter to nursery school); *James E. Johnson*, 35 ECAB 695 (1984) (the employee was found to have deviated from his postal route to search for a familiar restaurant, a personal mission); *Barbara Stamey (Ray C. Stamey)*, 32 ECAB 1767 (1981) (the employee's attendance at a prayer breakfast was found a substantial deviation made solely for personal reasons).

[10] *See generally* 1A A. Larson, *The Law of Workers' Compensation* § 31.21 (1993) (the violation of rules or prohibitions relating to the method of accomplishing the ultimate thing the claimant is employed to do, as opposed to those defining the ultimate work, is not a deviation from employment).

death. These exceptions are in the nature of an affirmative defense to the payment of compensation. When the Office relies on such a defense in rejecting a claim, it has the burden of proving that defense affirmatively.[11]

The Board has held that "willful misconduct" is generally regarded as deliberate conduct, involving premeditation, obstinacy or intentional wrongdoing with the knowledge that it is likely to result in serious injury, or conduct which is in wanton or reckless disregard of probable injurious consequences.[12] In the present case, appellant was driving her postal vehicle when the accident occurred. This activity was no different in nature from that in which she was normally engaged and required to perform. The Office has made no showing that appellant knew that her conduct was likely to result in serious injury or that she wantonly or recklessly disregarded probable injurious consequences. For this reason the Board finds that the Office has not met its burden of proving the affirmative defense of willful misconduct.

The July 22, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[11] *Alice Marjorie Harris*, 6 ECAB 55, 57 (1953).

[12] *Abraham Finkelstein*, 4 ECAB 130, 132 at note 8 (1951).