

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFRED B. RODNEY and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

*Docket No. 00-260; Submitted on the Record;
Issued November 9, 2000*

DECISION and ORDER

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

The issue is whether appellant was injured while in the performance of duty.

Appellant, an electronic technician, filed a notice of traumatic injury and claim for continuation of pay alleging that he sustained right ear and head trauma from an attack by three men on June 5, 1999. On the reverse side of the claim form, the employing establishment controverted appellant's claim, asserting that the attack occurred approximately a block away from the employing establishment while appellant was walking to work. The employing establishment also controverted continuation of pay. Appellant stopped work on June 5, 1999 and returned to work on July 8, 1999.

On July 26, 1999 the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant, including an explanation of how the alleged attack was work related.

Appellant subsequently submitted medical evidence and a narrative statement in which he stated:

"I would not have been attacked were I not employed there. I was attacked 30 minutes before my start time ... on my way to work. ... Incidentally, the attack occurred less than ½ block from [the employing establishment]..."

By decision dated August 30, 1999, the Office denied appellant's claim for compensation on the grounds that the claimed injury did not arise out of and in the course of employment.

The Board finds that appellant was not injured in the performance of duty.

As a general rule, off-premise injuries sustained by employees having fixed hours and place of work while going to or coming from work are not compensable as they do not arise out

of and in the course of employment.¹ Such injuries result merely from the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.² Certain exceptions to the general rule have developed where the hazards of travel may fairly be considered a hazard of the employment.³

In this case, the evidence shows the employee had, as a basis, fixed hours and a place of work. The evidence further shows that appellant was attacked while walking to work and had not reached the premises of the employing establishment. This is a clear example of a hazard common to all travelers on public streets or highways, a hazard unrelated to employment consideration. His travel to work on June 5, 1999, therefore, would be governed by the general rules for off-premise injuries. His injuries, therefore, would not be considered to have occurred within the performance of duty, as it occurred off premises on the way home from work.

The August 30, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 9, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

¹ *Harriet Williams*, 20 ECAB 327 (1969); *Rodney Eugene Hoover*, 24 ECAB 89 (1972).

² *Mohammed Bashir*, 26 ECAB 158 (1974).

³ The Board has stated that these recognized exceptions are dependent upon the particular facts and related to 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; (4) where the employee uses the highway to do something incident to the employment, with the knowledge and approval of the employer." *Robert A. Hoban*, 6 ECAB 773 at 774 (1954).