

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY KOKICH and U.S. POSTAL SERVICE,
SUNCOAST DISTRICT, Tampa, FL

*Docket No. 00-630; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on August 16, 1999.

On August 16, 1999 appellant, then a 42-year-old data transcriber, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on August 16, 1999 she sustained a laceration to her left hand when she was opening a flip-top DelMonte can during her break in the cafeteria. The employing establishment issued a Form CA-16, authorizing medical treatment on August 16, 1999 for appellant to be treated at the Doctor's Walk-In-Clinic. Appellant provided the Office of Workers' Compensation Programs with several doctors' reports, including a report dated August 18, 1999 from the Doctor's Walk-In-Clinic,¹ stating that she had a laceration to her left hand and received nine sutures and a tetanus shot.

In a letter dated August 27, 1999, the Office advised appellant of additional factual evidence needed to establish her claim and requested that she submit such within 30 days. Appellant submitted the requested information within the 30-day time period. The Office specifically asked appellant where she had purchased the can of fruit. On September 15, 1999 appellant responded that she had purchased the can of fruit at a Publix Super Market.²

In a decision dated October 1, 1999, the Office denied appellant's claim for compensation stating that she did not establish that she was injured in the performance of duty. The Office found that "the initial evidence in file was insufficient to establish the injury arose out of and in the course of employment because it was unclear [where] the DelMonte can, in which the traumatic injury was sustained, came from."

¹ The physician's signature is illegible.

² It should be noted that appellant's response dated September 15, 1999, received on September 24, 1999, was not officially placed in the record and thus was not assigned a record number.

The Board finds that appellant has established that she sustained an injury in the performance of duty.

Congress, in providing a compensation program for federal employees, did not contemplate a program of insurance against every injury, illness or mishap that might befall an employee; liability does not attach upon the mere existence of an employer-employee relationship.³ Instead, Congress provided for payment of compensation for personal injuries sustained while in the performance of duty.⁴ The Board has interpreted the phrase “sustained while in the performance of duty” as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of employment.”⁵

“In the course of employment” deals with the work setting, the locale and time of injury whereas “arising out of the employment” encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.⁶ In addressing the issue, the Board has stated:

“In the compensation field, to occur in the course of employment in general, an injury must occur:

(1) at a time when the employee may reasonably be said to be engaged in her [employing establishment’s] business; (2) at a place where she may reasonably be expected to be in connection with her employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.”⁷

It is well settled that an employee who within the time and space limits of employment engages in an act which ministers to personal comfort, health or necessity does not leave the course of employment and an injury sustained on her way to, from or during a period of ministering to such needs is compensable as arising out of and in the course of employment, unless there is a departure so great that an intent to abandon the job temporarily may be inferred, or unless the conduct cannot be considered an incident of the employment.⁸

An important factor in determining whether an injury was sustained in the performance of duty is an examination of whether the injury occurred on the industrial premises. The general rule, with regard to employees having fixed hours and places of work is that injuries occurring on the premises of the employing establishment, while the employees are going to or coming

³ *Sari A. Shapiroholland*, 47 ECAB 682 (1996).

⁴ 5 U.S.C. §§ 8102 (a), 8103, 8107.

⁵ 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).

⁶ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *Id.*

⁸ *Sari A. Shapiroholland*, *supra* note 3.

from work, before or after working hours, or at lunch time, are compensable, if occurring in the course of employment.⁹

In *Helen L. Gunderson*,¹⁰ and other cases, the Board has found that obtaining and drinking coffee and similar beverages, or the eating of a snack, during recognized breaks during daily work hours is now so generally accepted in the industrial life of our nation as to constitute a work-related activity falling into a general class of activity closely related to personal ministrations so that engaging in such activity does not take an employee out of the course of his or her employment.¹¹

While the Office denied the claim finding that the evidence was unclear where appellant obtained the can of fruit, compensability is not precluded even if appellant brought the can to work from a private establishment, rather than obtaining it at the place of employment. The Board has found that an injury sustained as a result of bringing drinking water to work could be in the performance of duty. In *James E. Chadden, Sr.*,¹² appellant injured his back while unloading 2½ gallons of water from his motorcycle upon his arrival at work. The Office in *Chadden* had denied the claim finding that “bringing water to work would not be considered a work factor” and that it was merely an act of personal convenience. The Board found that drinking water at work would be considered incidental to employment as it was an activity related to necessary personal comfort. The Board rejected the Office’s analysis that bringing one’s own drinking water to work was “an act of personal convenience” rather than an act related to “personal comfort”. In *Chadden*, the Board remanded the case for the Office to determine whether appellant’s chosen method of obtaining drinking water was unusual or unreasonable.

In the present case, the eating of a snack is an act of personal comfort. Appellant’s chosen method of obtaining a snack appears by no means unreasonable and, in fact, is irrelevant. Thus, appellant’s injury sustained while opening the can of fruit during a snack break arose in the performance of duty.

Since appellant has established that she sustained an incident in the performance of duty and she submitted medical evidence that she sustained a hand laceration as a result of the incident, appellant has met her burden of proof that she sustained an injury within the performance of duty on November 16, 1999.

⁹ *Timothy K. Burns*, 44 ECAB 125 (1992); *Arthur A. Reid*, 44 ECAB 979 (1993).

¹⁰ *Helen L. Gunderson*, 7 ECAB 440 (1955), *petition for recon. denied*, 8 ECAB 573 (1956).

¹¹ *JoAnn Curtis*, 38 ECAB 122 (1986).

¹² *James E. Chadden, Sr.*, *supra* note 6.

The decision of the Office of Workers' Compensation Programs dated October 1, 1999 is hereby reversed.

Dated, Washington, DC
January 25, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member