U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET M. ABNER and U.S. POSTAL SERVICE,
POST OFFICE, Pomona, CA

Docket No. 00-1838; Submitted on the Record;
Issued January 2, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's injury to her arm on July 29, 1999 was sustained while in the performance of duty.

On July 29, 1999 appellant, then a 54-year-old letter carrier, alleged that she broke her right arm when she fell in the driveway at her residence at approximately 2:45 p.m. She noted that she had made a comfort stop and was going to call her supervisor. On the reverse of the claim form, appellant's supervisor, Eva Subia, controverted the claim. She noted that, when injured, appellant was attempting to prevent her own personal motor vehicle from rolling away from the driveway of her home.

In a July 29, 1999 statement, appellant alleged that she had completed her route assignment and went home to make a telephone call to her supervisor and to use the restroom before returning to the office. She drove her postal vehicle to her residence, walked up the driveway, and was at the front door when she noticed that her personal vehicle had started moving down the driveway. Appellant ran towards her car and tripped over a piece of carpeting, sustaining injury to her right arm. The vehicle continued to roll down the driveway and struck the postal vehicle, parked at the front of the house. Appellant explained that she intended to call her supervisor to inquire whether any other letter carriers needed assistance before returning to her duty station.

The employing establishment submitted a memorandum, noting that appellant had been assigned to route 645 on the day of injury and was working on her nonscheduled day. Normally her route was 648, which included her home address as part of her delivery area. The employing establishment noted that, while appellant had authorization for lunch at home while on her own route, she was not authorized to go there when she was assigned to another route. The record indicates that appellant was authorized while on route 648 to have lunch between 1:00 p.m. to 1:50 p.m. at a local restaurant. The employing establishment contended that appellant had completed route 645 and had deviated from that route to route 648, without prior authorization from her supervisor, to return home. The distance from route 645 to appellant's home was

approximately five miles. By letter dated August 3, 1999, the employing establishment reiterated that on July 29, 1999 appellant was working in an overtime capacity and not assigned to her normal route.

In an August 13, 1999 memorandum, Richard A. Munoz, an employing establishment investigator, noted that he reviewed the accident reports, obtained statements and interviewed appellant's neighbor. He indicated that appellant had parked her postal vehicle on the street in the front of her home, walked into the carport where her automobile was parked, lifted the left side of her car cover and started her car, while sitting in it with the driver's door open and her left leg outside the door. The car popped out of gear and started moving. Appellant apparently tried to stop the car, but hit the gas pedal by mistake causing the car to move down the driveway. She tried to keep the door from closing on her left leg with her left arm; however, she broke her right arm after the door of her car struck the postal vehicle on the right rear bumper and quarter panel. After striking the postal vehicle, appellant's car continued to roll about 40 feet across the street where it struck a light pole and came to rest. Appellant's neighbor, Joseph Madrigal, submitted a statement noting that he heard a bang from the street and went outside. He observed appellant's car in the middle of the street and appellant was getting out of the car and in pain. Appellant could not close the door of her car and drove it out of the street and parked it next to her driveway. The employing establishment noted that appellant's description of her injury did not conform with that of the postal inspector and witness.

In a September 2, 1999 decision, the Office denied appellant's claim finding that an injury did not occur while appellant was in the performance of duty.

Appellant requested a hearing before an Office hearing representative that was held on February 9, 2000 at which she appeared and testified. She stated that she returned home, walked up the driveway towards the back door and, out of the corner of her eye, "saw the car moving backwards and it had its car cover on and everything." She stated that she started "to go after it and at that point in time I fell and I do [not] -- I was unconscious for a small -- a few seconds probably but -- and then they called the paramedics and they took me to the hospital and you know the rest as far as that other part goes." Appellant denied that she went into her vehicle at any time and that her purpose for going home was to take a comfort break and eat lunch.

Following a review of the hearing transcript Penny Stevenson, the postmaster of the employing establishment, submitted a February 29, 2000 statement. She reiterated that appellant was allowed to go home when she was on her regular route, as stated on Form 1564 which listed her house as one of three authorized lunch locations. The postmaster noted that management did not allow carriers to deviate from the assigned route unless they had permission from an immediate supervisor. She denied giving appellant permission to go to her home on a daily basis and indicated there were three listed locations for appellant to lunch while on the route assigned that day. She noted that lunch was to be completed before 2:00 p.m. Ms. Stevenson stated that she investigated the accident site and noted that appellant's driveway in front of her mobile home trailer was flat for about 45 to 50 feet and then became slanted. She interviewed appellant's neighbor, who reported that he heard the engine of appellant's car running and saw appellant move the car away from the light pole and drive it across the street in front of her home. The postmaster noted that appellant's keys were found in the ignition.

By decision dated March 23, 2000, the Office hearing representative affirmed the September 2, 1999 decision. The hearing representative found that appellant had deviated from her employment when she went home on July 29, 1999 and that her injury was not sustained while in the performance of duty.

The Board finds that appellant's injury of July 29, 1999 was not sustained while in the performance of duty.

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relationship.[1] Instead, Congress provided for the payment of compensation for personal injuries sustained while in the performance of duty. The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[2] In addressing this 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 his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[3]

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 represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[4]

The Office's procedure manual includes letter carriers in the first of four general classes of off-premises workers who, by the nature of their employment, perform service away from the employer's premises.[5] In determining whether this class of employees has sustained an injury in the performance of duty, the factual evidence must be examined to ascertain whether, at the time of injury, the employee is within the period of the employment, at a place where the employee

[1] *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Huebner*, 2 ECAB 20 (1948).

[2] *Shirley C. Graham*, 50 ECAB 107 (1998); *Thomas E. Keplinger*, 46 ECAB 699 (1995).

[3] *Maryann Battista*, 50 ECAB 343 (1999); *Allen B. Moses*, 42 ECAB 575 (1991).

[4] *Rebecca LeMaster*, 50 ECAB 254 (1999).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a)(1). *See Donna K. Schuler*, 38 ECAB 273 (1986).

reasonably may be and while the employee is fulfilling employment duties or engaged in activities reasonably incidental thereto.[6]

Appellant alleges that the accident occurred at a time when she was seeking personal comfort and, therefore, the deviation from her assigned postal route was insubstantial and her injury occurred while in the performance of duty.

Larson, in his treatise on workers' compensation law, notes a close relationship between the deviation doctrine and personal comfort doctrine in those cases where the smallness of the deviation is material.[7] He indicates that there are "insubstantial" deviations of momentary division that, if undertaken by an inside employee working under fixed time and place limitations, would be compensable under the personal comfort doctrine. Appellant contends that she was seeking personal comfort at the time of injury by making a comfort stop and to have lunch at her home.

The evidence of record establishes that appellant was authorized a specified period for lunch prior to 2:00 p.m. while on her assigned route at one of three designated locations. At the time of injury, 2:45 p.m., appellant was at her home, approximately five miles from her assigned route. The Board finds that appellant's journey constituted a personal mission and cannot be characterized as coming within the personal comfort doctrine.

Moreover, appellant's description of her injury does not comport with the investigation by the employing establishment or statement of her neighbor. Appellant alleged that after she arrived at her home, she walked up to the door of her house and noticed that her car started rolling down the driveway. She stated at the hearing that she attempted to go after the car when she tripped in the driveway and passed out for a few moments. The statement of her neighbor notes that, after hearing the noise of the collision, he went outside and observed appellant getting out of her car and in pain. She then got back in her car and drove it back to park it near her driveway. This description of events comports with the report of appellant's postmaster.[8] Appellant's description of her injury is not credible or consistent with the other statements of record, thereby casting greater doubt on the validity of her claim. The Board finds that appellant left her assigned route to journey to her home. Therefore, at the time of injury, she was not engaged in any activity reasonably incidental to her employment. Her journey constituted a personal mission and her injury was not sustained while in the performance of duty.

[6] *Thomas E. Keplinger*, *supra* note 2.

[7] A. Larson, *The Law of Workers' Compensation*, Vol 1, § 19.63.

[8] In a history obtained by Dr. W.R. Hale, appellant's physician, appellant related that she was delivering mail on her route near her home when she saw her car rolling down a driveway, apparently while a theft was in progress. "[Appellant] attempted to stop the theft and fell running, and became unconscious."

The March 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 2, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member