

**United States Department of Labor
Employees' Compensation Appeals Board**

B.C., Appellant

and

**U.S. POSTAL SERVICE, PERSONNEL
OPERATIONS SUPPORT, Dallas, TX, Employer**

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**Docket No. 09-653
Issued: December 24, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 7, 2009 appellant filed a timely appeal from the September 25, 2008 decision of the Office of Workers' Compensation Programs denying her compensation claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained an injury on October 14, 2004 while in the performance of duty.

FACTUAL HISTORY

On October 19, 2004 appellant, then a 54-year-old purchasing agent, filed a traumatic injury claim alleging that on October 14, 2004 she broke her left leg when her shoe became caught in a sprinkler head in a grassy area near a mall parking lot in San Diego, California. She submitted a prescription note and attending physician's report (Form CA-20) from her treating physician, Dr. Wynne N. Snoots, a Board-certified physiatrist, who advised that appellant sustained injury when she fell while on a business trip.

In a December 21, 2004 letter, the Office informed appellant that the evidence was insufficient to support her claim. Appellant was advised to submit additional medical and factual evidence within 30 days.

Appellant responded that her injury occurred while she was in San Diego, California, performing an annual site visit at Earth Tech, Inc., an environmental contractor. Travel was authorized from October 13 to 15, 2004. On October 14, 2004 a meeting with Earth Tech, Inc., ran late. Appellant and a coworker decided to visit a local mall to eat dinner and to purchase some souvenirs. After leaving the mall to return to their car, appellant tripped over an embedded water sprinkler head in the median strip of grass. She fell from the curb and struck the concrete. When appellant tried to stand up she felt excruciating pain. She returned to her hotel room where she elevated her leg and put ice on it. Around 2:00 a.m. on October 15, 2004, appellant went to a local emergency room since she was unable to put any weight on her leg. She was released from the emergency room around 5:15 a.m. and returned to her hotel. Appellant packed and returned to Dallas, Texas, later that day.

In a February 1, 2005 decision, the Office denied appellant's claim, finding that she was not injured while in the performance of duty.

Appellant subsequently requested review of the written record. In a December 29, 2004 statement, Kathleen Couvillion, a coworker, noted that, following the meeting with Earth Tech, Inc., she was returning to the hotel with appellant when they drove by a shopping mall. She suggested stopping for dinner at the mall as they could eat and shop for souvenirs. After their meal, appellant and Ms. Couvillion were walking back to the mall parking lot when the accident occurred.

In an August 18, 2005 decision, an Office hearing representative affirmed the denial of appellant's claim finding that she was not in the performance of duty at the time of the injury.

In a letter dated July 24, 2006, appellant requested reconsideration.

By decision dated August 31, 2007, the Office denied further reconsideration of the merits of the claim.

On July 15, 2008 the Board remanded the case to the Office for a merit review as it failed to act on appellant's reconsideration request in a timely fashion.¹

By decision dated September 25, 2008, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the

¹ Docket No. 08-775 (issued July 15, 2008).

performance of her duty.² The phrase sustained while in the performance of her 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 employment.³ Arising in the course of employment relates to the elements of time, place and work activity.⁴ An injury is said to arise in the course of employment when it takes place within the period of the employment, at a place where the employee reasonably may be and while they are fulfilling their duties or are engaged in doing something incidental thereto.⁵ Arising out of employment relates to the causal connection between the employment and the injury claimed.⁶

Under the Act, an employee on travel status or a temporary-duty assignment or special mission for her employer is in the performance of duty and, therefore, under the protection of the Act 24 hours a day with respect to any injury that results from activities essential or incidental to her special duties.⁷ Examples of such activities are eating,⁸ returning to a hotel after eating dinner and engaging in reasonable activities within a short distance of the hotel where the employee is staying.⁹ However, when a claimant voluntarily deviates from such activities and engages in matters, personal or otherwise, which are not incidental to the duties of his or her temporary assignment, they cease to be under the protection of the Act. Any injury occurring during these deviations is not compensable.¹⁰ Examples of such deviations are visits to relatives or friends while in official travel status,¹¹ visiting nightclubs and bars,¹² skiing at a location 60

² 5 U.S.C. § 8102(a).

³ *R.A.*, 59 ECAB ___ (Docket No. 07-1814, issued June 19, 2008); *Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *V.O.*, 59 ECAB ___ (Docket No. 07-1684, issued May 2, 2008); *R.S.*, 58 ECAB ___ (Docket No. 06-1312, issued August 17, 2007).

⁵ *L.K.*, 59 ECAB ___ (Docket No. 07-1763, issued April 22, 2008); *D.L.*, 58 ECAB ___ (Docket No. 07-976, issued August 23, 2007).

⁶ See *Charles Crawford*, 40 ECAB 474 (1989) (the phrase arising out of and in the course of employment encompasses not only the concept that the injury occurred in the work setting, but also the causal concept that the employment caused the injury); see also *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁷ *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O Connor*, 4 ECAB 21 (1950).

⁸ *Michael J. Koll, Jr.*, 37 ECAB 340 (1986); *Carmen Sharp*, 5 ECAB 13 (1952)

⁹ *Ann P. Drennan*; *Janet Kidd (James Kidd)*, *supra* note 7; *Theresa B.L. Grissom*, 18 ECAB 193 (1966).

¹⁰ *Karl Kuykendall*, 31 ECAB 163 (1979).

¹¹ *Ethyl L. Evans*, 17 ECAB 346 (1966); *Miss Leo Ingram*, 9 ECAB 796 (1958); *George W. Stark*, 7 ECAB 275 (1954).

¹² *Conchita A. Elefano*, 15 ECAB 373 (1964).

miles from where an employee is undergoing training¹³ and taking a boat trip during nonworking hours to view a private construction site.¹⁴

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.¹⁵

ANALYSIS

Appellant was on official travel status in San Diego, California, from October 13 to 15, 2004 at the time she sustained injury. In his treatise on workers' compensation law, Larson explains:

“Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, the injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.”¹⁶

On the evening of October 14, 2004 appellant and a coworker stopped at a local mall to eat dinner and to shop for souvenirs. After finishing dinner and completing their purchases they were returning to the parking lot where their car was located. However, appellant tripped over a sprinkler head and sustained a left leg fracture.

The Board has held that an employee on travel away from her normal post of duty is extended coverage under the Act for all ordinary incidents which the employer would normally contemplate as occurring in the course of such mission. The circumstances of this case are similar to those in *A.W.*¹⁷ The employee was authorized to travel with coworkers in an employing establishment van to attend a one-day out of town conference. After the conference ended, the employee and a coworker walked through a nearby casino and the Boardwalk area in Atlantic City, New Jersey, prior to dining at a restaurant in that area. The employee fell after she exited the restaurant on her way back to the van for the return trip to the employing establishment. The Board found there was no substantial deviation from her employment. It was a reasonable necessity that an employee attending the conference eat at a local restaurant before departing for a three-hour, bus trip to the employing establishment in Baltimore,

¹³ *Karl Kuykendall*, *supra* note 10.

¹⁴ *Mattie A. Watson*, 31 ECAB 183 (1979).

¹⁵ *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

¹⁶ A. Larson, *The Law of Workers' Compensation* § 25.01 (2000); *see Susan A. Filkins*, 57 ECAB 630 (2006).

¹⁷ 59 ECAB ____ Docket No. 08-306 (issued July 1, 2008).

Maryland. The Board found that the employee's injury was sustained in the performance of duty and reversed an Office decision rescinding acceptance of the claim.

The present case may be distinguished from *S.C.*¹⁸ The employee was attending a mandatory out of town training conference. After eating dinner, she went shopping at a local Target store with coworkers where her slip and fall occurred. The Board found that the employee's shopping at a Target store was not incidental to the duties of her temporary assignment as it was a personal activity. She ceased to be under the protection of the Act due to this deviation. Thus, her injury was found not to be in the performance of duty.

The employing establishment authorized appellant's travel to San Diego, California, for an annual site visit with Earth Tech, Inc., an environmental contractor. After meeting with the contractor on October 14, 2004, appellant and a coworker went to a local mall to eat dinner. She remained in the course of employment with respect to all normal incidents of her employment. The facts in this case do not establish a substantial deviation from her employment.¹⁹ As in *A.W.*, it was a reasonable necessity that appellant eat dinner following her meeting with the contractor. The fact that she ate at a restaurant located in a mall where there were other shops does not establish a substantial deviation from her employment. The Board finds that appellant was in the performance of duty when she sustained injury on October 14, 2004. The incident giving rise occurred at the mall parking lot following her dinner and on her return to her car. It arose in the course of appellant's employment.²⁰ The case will be remanded to the Office for further development of the medical evidence on the issue of appellant's injury and disability arising from the October 14, 2004 incident.

CONCLUSION

The Board finds that appellant was injured while in the performance of duty on October 14, 2004.

¹⁸ Docket No. 08-2440 (issued June 22, 2009).

¹⁹ Compare *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein at 237-38.

²⁰ See *The Law of Workers' Compensation*, *supra* note 16 (injuries arising out of the necessity of eating in restaurants away from home are usually held compensable).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2008 is set aside. The case is remanded for further development in conformance with this decision.

Issued: December 24, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board