

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

S.L., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Charlotte, NC, Employer)

**Docket No. 14-1591
Issued: December 24, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 8, 2014 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) decisions dated March 26 and June 2, 2014 which denied her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on January 29, 2014, as alleged.

On appeal, appellant addressed the factual history of her injury, including the fact that she left work at 5:00 p.m. and was involved in a motor vehicle accident at 7:00 p.m. She was traveling to her home at approximately 10 miles per hour due to icy road conditions.

FACTUAL HISTORY

On February 11, 2014 appellant, then a 42-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that at 7:00 p.m. on January 29, 2014 she sustained injuries to her

¹ 5 U.S.C. § 8101 *et seq.*

right arm, shoulder and neck as a result of a motor vehicle accident. She was traveling down Seven Creeks Highway when she hit a patch of ice in the road and slid into a ditch. Appellant's regular tour of duty was 8:00 a.m. to 5:00 p.m., Tuesday through Saturday.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on January 29, 2014. The form did not indicate the name of the medical facility or physician appellant was authorized to visit.

Appellant submitted a January 30, 2014 report from Columbus Regional Healthcare System. She was diagnosed with a shoulder strain.

In a duty status report dated February 3, 2014, Dr. Richard G. Berry, a Board-certified internist, listed a history that appellant injured her neck, shoulder and arm in a motor vehicle accident on January 29, 2014. He excused her from work from January 31 to February 3, 2014.

On February 4, 2014 appellant's supervisor stated that appellant completed her route on January 29, 2014 and signed out at 5:00 p.m. At 7:24 p.m. she received a text message from appellant that her car slid into a ditch while driving home.

In a February 24, 2014 letter, OWCP advised appellant that the evidence of record was not sufficient to establish that she was injured in the performance of duty. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement describing that she left work at 5:00 p.m. on January 29, 2014. In a March 10, 2014 report, Dr. Berry diagnosed a muscle strain due to a motor vehicle accident.

On March 25, 2014 OWCP held a conference with appellant's supervisor, who advised that on January 29, 2014 appellant was on her way home from work in her private vehicle when she encountered ice in the road and slid into a ditch. The supervisor confirmed that the roads were extremely icy on that date and advised that appellant lived 35 miles from the duty station.

By decision dated March 26, 2014, OWCP denied the claim. It found that appellant was not in the performance of duty at the time of injury. She was not on her route or performing duties as a rural carrier.

On April 19, 2014 appellant requested reconsideration. She submitted a narrative statement reiterating the facts of her claim.

By decision dated June 2, 2014, OWCP denied modification of the March 26, 2014 decision. It found that appellant's position as a rural carrier and the use of her own vehicle as part of her job met the exception for the premises rule, covering her commute to and from work. OWCP found, however, that, although Seven Creeks Highway was where appellant was reasonably expected to be, the accident took place at approximately 7:00 p.m., long after her work shift ended at 5:00 p.m., at a time when she was not reasonably expected to be commuting between her duty station and her home, despite the weather conditions on January 29, 2014.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² 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 employment.³ 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 his or her employer's business, at a place where he or she may reasonably be expected to be in connection with his or her employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁴

The Board has recognized as a general rule that off-premises injuries sustained by employees having fixed hours and places of work while going to or coming from work or during a lunch period, are not compensable, as they do not arise out of and in the course of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.⁵

The Board has recognized exceptions to this general coming and going rule, which are dependent upon the relative facts to each claim: (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; and (4) where the employee uses the highway to do something incidental to his or her employment with the knowledge and approval of the employer.⁶

ANALYSIS

OWCP found that appellant was not in the performance of duty on January 29, 2014 when she was injured during a motor vehicle accident. The record establishes that she is a rural carrier who completed her route on January 29, 2014 and signed out at 5:00 p.m. Appellant was driving her personal vehicle on Seven Creeks Highway to her home, located 35 miles away from her duty station. Due to ice in the road, she slid into a ditch at 7:00 p.m.

FECA Program Memorandum No. 142 provides that "a postal employee who uses [her] personal vehicle in the performance of [her] duties, with the knowledge and consent of [her] employer, is in the performance of duty while traveling in [her] vehicle to and from work and home regardless of the type of contract under which the vehicle was provided."⁷ The basic test

² *Id.* at § 8102(a).

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *See Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *See Thomas E. Keplinger*, 46 ECAB 699 (1995); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6 (August 1992).

⁵ *See John M. Byrd*, 53 ECAB 684 (2002); *see also Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

⁶ *See Melvin Silver*, 45 ECAB 677 (1994); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

⁷ FECA Program Memorandum No. 142, *Duty Status of Employees While Traveling To and From Work and Home* (August 31, 1971).

of coverage in each case of reported injury sustained while an employee is traveling to or from home and work in a personal vehicle is whether the employing establishment knew about and consented to the employee's use of a personal vehicle to perform his or her duties.⁸ The facts pertaining to the use of a privately-owned vehicle must be developed and each case must meet the other requirements that generally apply to establish that the employee was in the performance of duty, *i.e.*, traveling the most direct route.⁹

The Board finds that appellant is a rural carrier who was traveling from work to home in her personal vehicle with the knowledge and consent of her employing establishment; however, her January 29, 2014 injury did not occur in the performance of duty. Even if appellant's travel is covered under FECA, the timing of the injury must be within a reasonable interval before or after her work shift and she must be engaged in preparatory or incidental acts that benefit her employer. In *B.B.*,¹⁰ appellant had arrived to work 1.25 hours prior to her scheduled shift when she fell in a parking lot. The Board found that she was not in the performance of duty as her arrival time was not within a reasonable interval of her shift nor was she engaged in any preparatory or incidental acts of employment. In this case, appellant's presence on the highway two hours after she signed out of work was not within a reasonable interval of her shift as she lived 35 miles away from the duty station. Moreover, at the time of her injury, she was not engaged in any preparatory or incidental acts pertaining to her employment. The Board finds that appellant was not in the performance of duty when she was involved in a motor vehicle accident on the evening of January 29, 2014.

On appeal, appellant reiterated that she was driving to her home at approximately 10 miles per hour due to icy road conditions. The Board finds that her injury was an ordinary nonemployment hazard of the journey itself, which is shared by all travelers. The ice was a hazard common to all travelers and not a hazard related to appellant's employment.¹¹ The Board has generally held that conditions caused by weather, including ice, are dangers inherent to the commuting public and do not constitute special hazards.¹² In *R.O.*,¹³ the Board found that the employee's off-premises slip and fall on an icy public sidewalk did not arise in the performance of duty as it was not a special hazard of the route but a hazard shared by all commuters. The Board noted that the hazard that caused injury, *i.e.*, ice and snow, was a hazard commonly encountered by pedestrians in Washington, DC during the winter months. The ice appellant

⁸ The Board notes that FECA Program Memorandum No. 104, *Rural Letter Carriers Driving Their Own Vehicles* (October 24, 1969) gave as a qualification for coverage that rural carriers be required by the employer to furnish a vehicle for the handling of mail. While this qualification is still valid, it is no longer necessary under Memorandum No. 142 "so long as the employer knew and approved of the rural carriers' use of their personal vehicles in the performance of their duties." *Id.*

⁹ *Id.*

¹⁰ Docket No. 08-1338 (issued November 4, 2008).

¹¹ See *Jimmie Brooks*, 54 ECAB 248 (2002).

¹² See *G.N.*, Docket No. 12-261 (issued July 23, 2012).

¹³ Docket No. 08-2088 (issued May 18, 2009). See generally, *Harriet Williams (Harrison O. Williams)*, 20 ECAB 327 (1969) (the Board found that claimant's death due to a motor vehicle accident on his way to work did not come within exceptions to the off-premises injury rule. It explained that, "the ordinary act of travel to and from one's place of employment is not an act incidental to employment"). *Id.* at 329.

encountered while driving home was not a special hazard. Appellant has failed to meet her burden of proof to establish her claim.

The Board notes that the employing establishment issued appellant a Form CA-16 on January 29, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹⁴ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on January 29, 2014, as alleged. On return of the record, OWCP should consider the Form CA-16 issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the June 2 and March 26, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 24, 2014
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304.