

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LINDA S. JACKSON and U.S. POSTAL SERVICE,  
POST OFFICE, Woodside, N.Y.

*Docket No. 97-1950; Submitted on the Record;  
Issued April 22, 1998*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained injuries and resultant disability while in the performance of duty on September 7, 1995 causally related to factors of her federal employment.

On October 2, 1995 a traumatic injury claim was filed on behalf of appellant, then a 46-year-old clerk, alleging that she sustained injuries in an automobile accident on September 7, 1995 while in the performance of duty. On September 7, 1995 appellant was on a 90-day detail to the Staten Island Post Office as an acting supervisor. This position was a term of settlement for her voluntary withdrawal of an Equal Employment Opportunity Commission (EEOC) complaint. Appellant was scheduled to work from 2:30 p.m. to 11:00 p.m. with nonscheduled days on Tuesday and Wednesday. At approximately 11:30 p.m. on September 7, 1995, appellant was traveling home from work at the Staten Island Post Office when her automobile became disabled on the Belt Parkway. Upon exiting her car to ascertain the nature of the problem, she was struck by another vehicle. Appellant sustained injuries including bilateral traumatic injury amputation of the lower extremities, right proximal humerus fracture and a pelvic fracture.

On October 5, 1995 the employing establishment controverted appellant's claim, asserting that appellant's tour of duty ended at 11:00 p.m. on September 7, 1995; she was not in the performance of duty and was not on employing establishment premises at the time of the accident; and she was not involved in official "off premise" duties at the time of the accident.

A telephone conference was held on November 27, 1995 between the Office of Workers' Compensation Programs and L.E. Roth, a manager of customer service at the employing establishment and appellant's supervisor. During that conference, Mr. Roth indicated that appellant was not in temporary-duty status, was not on the clock during her commute, and was not reimbursed for her expenses for the commute from her home to her position while on detail.

In a decision dated December 28, 1995, the Office denied appellant's claim on the grounds that her injuries did not occur while she was in the performance of duty. In a merit decision dated March 7, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that she sustained injuries on September 7, 1995 in the performance of duty, causally related to factors of her federal employment.<sup>1</sup>

A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.<sup>3</sup> In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.<sup>4</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>6</sup> The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>7</sup>

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not

---

<sup>1</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on May 19, 1997, the only decision before the Board is the Office's March 7, 1997 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a)

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

<sup>5</sup> *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

<sup>6</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>7</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

attach merely upon the existence of an employee/employer relation.<sup>8</sup> Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase “while in the performance of duty” to be the equivalent of the commonly found requisite in workers’ compensation law of “arising out of and in the course of employment.”

“In the course of employment” deals with the work setting, the locale, and the time of injury whereas “arising out of employment” encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.<sup>9</sup> In addressing the issue, the Board stated:

“In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in his master’s business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in something incidental thereto.”<sup>10</sup>

With respect to the phrase “in the course of employment” the Board has accepted the general rule of workers’ compensation law that the injuries of employees having fixed hours and places of work that occur on the premises of the employing establishment while the employee is going to or coming from work, before or after work or at lunch time, are compensable.<sup>11</sup> Given this rule, the Board has also noted that the course of employment for an employee having a fixed time and place of work includes a reasonable time before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts, and that what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee’s activity incident to her employment.<sup>12</sup> Some substantial employer benefit or an employer requirement must be shown therefore in order to consider the activity involved to be arising out of employment. It is incumbent upon appellant to establish that it arose out of her employment; that is, the accident must be shown to have resulted from some risk incidental to the employment.<sup>13</sup>

In the present case, appellant was involved in an automobile accident that occurred off premises while she was commuting from work. 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, are not compensable as they do not arise out of and in the course of employment. Such injuries are merely the ordinary, nonemployment hazards of the journey

---

<sup>8</sup> *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Heubner*, 2 ECAB 20 (1948).

<sup>9</sup> *Denis F. Rafferty*, 16 ECAB 413 (1965).

<sup>10</sup> *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

<sup>11</sup> See *Annette Stonework*, 35 ECAB 306 (1983).

<sup>12</sup> *Narbik A. Karamiani*, 40 ECAB 617 (1989) (citing *Clayton Varner*, 37 ECAB 248 (1985)).

<sup>13</sup> *Timothy K. Burns*, 44 ECAB 125 (1992).

itself which are shared by ordinary travelers. There are recognized exceptions which are dependent upon the particular facts relative to each claim. These exceptions pertain to the following instances: (1) where the employment requires the employee to travel on 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 a fireman; and (4) where the employee uses the highway to do something incidental to her employment with the knowledge and approval of the employer.<sup>14</sup>

A review of the record indicates that appellant's commute from her place of employment does not fall within any of the recognized exceptions to the general rule as she was not required to travel as a requisite of her employment; she was not using transportation supplied by the employing establishment in her commute to and from work; she was not subject to emergency calls; and she was not engaged in an activity incidental to employment at the time of the accident. Counsel for appellant has argued that appellant's commute was incidental to her employment and was within the scope of the fourth exception because appellant was traveling to the Staten Island Post Office rather than the Woodside Post Office relative to a settlement agreement between appellant and the employing establishment. While the Board has recognized that the Act covers an employee 24 hours a day when she is on travel status or on a temporary-duty assignment or a special mission and engaged in activities essential or incidental to such duties, appellant's employment detail in relation to the settlement of her EEOC claim does not fall within any of the aforementioned categories.<sup>15</sup> Rather, appellant was on a detail to a fixed place of work, with fixed hours and the employing establishment did not compensate appellant nor have any obligation to compensate appellant for her commuting costs to and from said detail. Consequently, appellant's accident falls within the scope of an off-premises accident and the injuries she sustained were attendant to the ordinary nonemployment hazards of the journey itself which are shared by all travelers. Appellant has not established that she sustained any injuries in the performance of duty causally related to factors of her federal employment.

---

<sup>14</sup> *Robert A. Hoban*, 6 ECAB 773 (1954) citing *Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469 (1947); see also *Melvin Silver*, 45 ECAB 677 (1994).

<sup>15</sup> *Cf. Gary L. Fowler*, 45 ECAB 365 (1994); *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein.

The decision of the Office of Workers' Compensation Programs dated March 7, 1997 is hereby affirmed.

Dated, Washington, D.C.  
April 22, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member