U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE HODGE and U.S. POSTAL SERVICE,
POST OFFICE, Mexia, Tex.

Docket No. 96-1958; Submitted on the Record;
Issued December 8, 1998

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury on April 22, 1996 while in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet her burden of proof in establishing that she sustained an injury on April 22, 1996 while in the performance of duty.

On April 24, 1996 appellant, then a 55-year-old, customer service supervisor, filed a traumatic injury claim alleging that she sustained a broken collar bone and four broken ribs as a result of an automobile accident on her way to a required training session. On the reverse side of the form, the employing establishment indicated that appellant stopped work on April 22, 1996 and return to work on May 4, 1996.

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 performance of his duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation law, namely, "arising out of and in the course of employment." "Arising out of the employment' tests the causal connection between the employment and the injury; "arising in the course of employment" tests work connection as to time, place, and activity. For the purposes of determining entitlement to compensation under the Act, "arising in the course of employment," *i.e.*, performance of duty, must be established before "arising out of the employment," *i.e.*, causal relation, can be addressed.

[1] 5 U.S.C. § 8102(a).

It is well established that off-premise injuries sustained by employees having fixed hours and place 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, but out of the ordinary, nonemployment hazards of the journey itself which are shared by all travelers. Certain exceptions to this rule have, of course developed, where the hazards of the travel may fairly be considered a hazard of the employment. These recognized exceptions are dependent upon the particular facts and related to situations: (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 incident to his employment, with the knowledge and approval of the employer.

In the present case, the evidence establishes that appellant had fixed hours and place of work. She was told in advance, however, to report to a different location on April 22, 1996 for required training. The training took place on appellant's regularly scheduled day off for which she received overtime pay. Appellant left home in her personal vehicle to attend the required training at the nearest training facility which was approximately 45 miles from her home.

As to the exceptions to the going and coming rule, appellant's employment did not require her to travel, she did not receive an allotment or reimbursement for travel expenses,[2] she was not subject to emergency calls and she was not engaged in a special errand or mission incident to her employment at the time of the injury. On appeal, appellant stated that "since the training site was located beyond commuting distance with a start time of 8:00 am, I elected to waive my right for lodging and drive to training on the morning schedule."[3] Therefore, appellant was not in a travel status. Appellant's decision to drive to the alternate work site to attend training that morning at a later starting time than her usual starting time, indicates that appellant considered the "journey to work" not unreasonable. Also, appellant was on a public highway, which was not a part of or under the control of the employing establishment when she sustained injuries in a two car accident. The fact that appellant was reporting to an alternate work site or that she was attending training on her regularly scheduled day off for which she received overtime pay, does not exclude her from the going and coming rule. The Board finds that appellant's injury was the result of an ordinary, nonemployment hazard of the journey itself, which is shared by all travelers, and that nothing in the facts brings appellant's injury within any of the exceptions to the general rule. Therefore, appellant's injury was not sustained while in the performance of duty.

[2] Larson, *The Law of Workers' Compensation* § 16.31.

[3] There is no evidence of record to support appellant's contention that she was entitled to lodging in order to attend training, or that the training site was beyond commuting distance.

The decision of the Office of Workers' Compensation Programs dated May 16, 1996 is affirmed.

Dated, Washington, D.C.
December 8, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member