U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDIA E. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Denver, Colo.

Docket No. 97-1026; Submitted on the Record;
Issued December 16, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, a city carrier, filed a claim on September 12, 1995 alleging that she sustained injuries in a motor vehicle accident while in the performance of duty. The Office of Workers' Compensation Programs denied appellant's claim by decision dated December 13, 1996.

Congress, in providing for 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 her employment; liability does not attach merely upon the existence of any employee/employer relation.[1] The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."[3]

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[1] *Minnie N. Heubner (Robert A. Heubner),* 2 ECAB 20, 24 (1948); *Christine Lawrence,* 36 ECAB 422-24 (1985).

[2] *See* Act, 5 U.S.C. §§ 8101-8193.

[3] *James E. Chadden, Sr.,* 40 ECAB 312, 314 (1988).

"In the course of employment" deals with the work setting, the locale and time of injury.[4] 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 her 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 doing something incidental thereto."[5]

In the present case, appellant indicated that the employing establishment assigned her to a new auxiliary route on September 12, 1995. She stated that she normally delivered this route in the designated manner. However, appellant stated that she "significantly deviated" while still on the route due to a large volume of mail for a new complex on the route. She indicated that she felt that it would be more effective and efficient to deliver the mail in this manner. Appellant stated that the employing establishment was not satisfied with her delivery time on the route and that she made the change in her assigned route in order to investigate whether this change would improve her time as she had a large volume of mail. Appellant stated that she was unaware that she was required to seek a supervisor's permission prior to making such a change in the route.

Appellant's supervisor, Peter J. McKenna, indicated on the reverse of appellant's claim form that she was in the performance of duty at the time her injury occurred. Mr. McKenna reviewed appellant's statement and stated that she did not ask permission to deviate from her route and that she should have followed the route as it was designed. He agreed that there was a new complex and that the mail volume was increasing, but asserted that delivery was scheduled for the end of the route for that reason. In additional written statements, Mr. McKenna noted that appellant stated that she had finished with lunch and was returning to her route when she was rear-ended. He stated appellant had all of her mail in her vehicle at the time of her accident and that the beginning of her route was not within the one mile radius of the start of the route. Mr. McKenna noted that appellant had not informed a supervisor of her change in route. In a telephone conversation with the Office, he stated that appellant was approximately three miles from the beginning of her route at the time the accident occurred.

In a letter dated December 12, 1996, the employing establishment challenged appellant's claim noting that appellant was to complete her normal route and then deliver part of the split of another route. The employing establishment alleged that appellant had deviated from her route to both eat at an unauthorized lunch location and to deliver the split route in reverse order. The employing establishment stated that it was when appellant was leaving her unauthorized lunch area that the accident occurred.

In this case, the record does not include the necessary information for the Board to determine whether appellant's injury occurred in the performance of duty. The Board has stated

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[4] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

[5] *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

that to determine whether an employee has deviated from an employment trip it must be shown that the deviation was aimed at reaching some specific personal objective.[6] Appellant has indicated that she altered her route in order to better perform the duties of her position and her supervisor, Mr. McKenna, appears to support this assertion in his statements. The employing establishment later indicated that appellant's accident occurred after she lunched at an unauthorized location. The employing establishment provided no indication of what this location would be or where appellant should have taken her lunch. The record is also unclear whether appellant had regained her route at any point at the time the accident occurred. The record does not contain sufficient information to ascertain whether appellant's deviation was for personal reasons,[7] *i.e.*, lunching at a preferred location, or whether the deviation was incidental to appellant's employment although a violation of an expressed prohibition, *e.g.* attempting to perform her duties in a way not previously approved by the employing establishment [8]

While appellant has the burden of proof to establish her claim, the Office has a responsibility in the development of the evidence. Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible, particularly when such evidence is in the possession of the government and is, therefore, more readily accessible to the Office.[9] The Office did not fulfill this obligation in the present case, as it did not request relevant evidence from the employing establishment such as a map indicating the location of appellant's accident in relation to any portion of her route, as well as evidence regarding where appellant lunched and where she was required to lunch. The Office should also provide appellant with an opportunity to address these issues. After developing this and such further information as the Office deems necessary, the Office should issue an appropriate decision.

[6] *Norman R. Hemby*, 40 ECAB 901, 905-06 (1989).

[7] *Katherine Kirtos*, 42 ECAB 160 (1990).

[8] *Thomas E. Kiplinger*, (Docket No. 93-2359, issued April 12, 1995).

[9] *Edward Schoening*, 41 ECAB 277, 282 (1989).

The decision of the Office of Workers' Compensation Programs dated December 13, 1996 is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, D.C.
December 16, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member