U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE S. CARRILLO and DEPARTMENT OF VETERANS AFFAIRS, LOUISVILLE VETERANS ADMINISTRATION MEDICAL CENTER, Louisville, Ky.

Docket No. 95-2860; Submitted on the Record;
Issued July 10, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an injury while in the performance of duty on September 7, 1994.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of duty on September 7, 1994.

On September 9, 1994 appellant, then a nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right knee injury on September 7, 1994 at the Executive Inn in Owensboro, Kentucky. On the reverse of the form, Agatha K. Fox, appellant's supervisor, indicated that appellant stopped work on September 9, 1994 and that appellant was out of town to attend a continuing education units presentation, for which she was approved for authorized absence. Appellant's claim was accompanied by an undated narrative statement, medical records and correspondence with the employing establishment regarding her claim.

By decision dated May 18, 1995, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant's injury occurred in the performance of duty.

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of her duty.[2] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the coverage formula commonly found in workers' compensation

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id.* at § 8102(a).

laws, namely, "arising out of and in the course of employment."[3] "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.[4] 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.

In addressing this issue, the Board has stated:

> "[I]n the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place; (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while [she] is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment or the risk is incidental to the employment or to the conditions under which the employment is performed."[5]

In an undated narrative statement, appellant indicated that she worked from 7:30 a.m. until 4:00 p.m. on September 7, 1994 the date of injury. Inasmuch as the time of injury was not within appellant's workday, the Board finds that the incident did not occur within the period of appellant's employment.

The Board also finds the evidence of record insufficient to establish that appellant was at a place where she may reasonably be expected to be in connection with the employment. In response to the Office's November 29, 1994 letter requesting additional factual and medical evidence, appellant stated in a December 22, 1994 letter that "I was not directed by the [employing establishment] to stay overnight prior to the meeting nor was I on travel orders." Appellant stated that she felt the need to stay in a hotel the night before the meeting because she had worked until 4:00 p.m. on September 7, 1994, and that the meeting was 106 miles in one direction and started at 7:30 a.m. Appellant further stated that the employing establishment "did not pay for travel nor the hotel bill." Additionally, appellant stated that another employee of the employing establishment, Maria Marshall, stayed at the same hotel and provided her work telephone number. In its November 29, 1994 response to the Office's letter of the same date, the employing establishment stated that appellant "was neither directed to attend the training, nor to stay overnight. The only benefit given to [appellant] was [a]uthorized [a]bsence for the date of the meeting only [September 8, 1994]." The employing establishment further stated that appellant "was injured in the hotel, she was not on authorized travel and therefore was not on travel orders." In addition, the employing establishment stated that appellant "paid her own

[3] *Bernard E. Blum*, 1 ECAB 1 (1947).

[4] *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] *Allan B. Moses*, 42 ECAB 575 (1991); *Barry Himmelstein*, 42 ECAB 423 (1991); *Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954); *Harold Vandiver*, 4 ECAB 195 (1951).

expenses," that it "did not reimburse her" and that no other employees stayed overnight. Inasmuch as appellant was not on travel status based on her own admission, as well as, the employing establishment's statement, the Board finds that appellant did not sustain a right knee injury while in the performance of duty on September 7, 1994. In addition, the Board finds that, although the employing establishment stated that no other employee stayed overnight in the hotel, appellant has failed to submit corroborative evidence of her statement that Ms. Marshall attended the course and stayed overnight in the same hotel.

The May 18, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 10, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member