

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL R. GABRIEL and DEPARTMENT OF THE AIR FORCE,  
WRIGHT PATTERSON AIR FORCE BASE, Ohio

*Docket No. 97-313; Submitted on the Record;  
Issued November 16, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of his federal employment.

The Board has duly reviewed the case record and finds that appellant did not sustain an injury in the performance of his federal employment.

In the present case appellant, an electronic engineer, sustained multiple injuries to the spinal cord, lung and left hand when he lost control of his motor vehicle on October 12, 1995 while driving to classes at the University of Dayton. Appellant was enrolled in a long-term full-time training program at the University of Dayton from September 1995 to May 1996 to pursue a Masters Degree in mechanical engineering. The long-term training program was approved and paid for by appellant's employing establishment to both improve the expertise of the employing establishment as well as appellant's technical and leadership skills. While in the long-term training program appellant's duty station was the University of Dayton. Appellant did not have to relocate to attend the training program. Appellant was not in temporary duty status while attending the training program and appellant was not entitled to receive reimbursement for travel costs.

The Office of Workers' Compensation Programs denied appellant's claim by decisions dated January 22 and October 1, 1996 on the grounds that the injury did not occur in the performance of appellant's federal employment.

The Federal Employees' Compensation Act<sup>1</sup> provides for the payment of compensation benefits for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "while in the performance of duty" in the Act has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers'

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<sup>1</sup> 5 U.S.C. § 8102(a).

compensation law of “arising out of and in the course of employment.”<sup>2</sup> 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 his or her master’s business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.”<sup>3</sup>

The Board has stated as a general rule that off-premises 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 are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.<sup>4</sup> Due primarily to the myriad of factual situations presented by individual cases over the years, certain exceptions to the general rule have developed where the hazards of the travel may fairly be considered a hazard of the employment. The Board has said, “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; (4) where the employee uses the highway to do something incidental to his employment with the knowledge and approval of the employer.”<sup>5</sup>

In the present case, the evidence establishes the employee had been assigned to a long-term training program at the University of Dayton. The University of Dayton had become appellant’s duty station and appellant had set hours of training at the University. Appellant therefore did have fixed hours and a place of work. His trip to his duty station, the University of Dayton, therefore, would be governed by the general rules for off-premises injuries. His injury, therefore, would not be considered to have occurred within the performance of duty as it occurred off-premises on the way to work. His trip on that day would not meet any of the exceptions for the rule. His injury, therefore, does not come under any of the exceptions to the general rule.

Finally, the Board notes that while injuries occurring to employees while on temporary duty status during required travel are generally compensable,<sup>6</sup> in the present case appellant was not on temporary duty status at the time of his injury. Appellant’s reassignment to training and a new duty station in September 1995 did not bring his travel to his new duty station on October 12, 1995 within the performance of duty.

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<sup>2</sup> *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Robert F. Hart*, 36 ECAB 186 (1984).

<sup>5</sup> *Id.*

<sup>6</sup> *See Jose H. Pico*, 46 ECAB 750 (1995).

The decisions of the Office of Workers' Compensation Programs dated October 1 and January 22, 1996 are hereby affirmed.

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

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member