

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMY UREEL, claiming as widow of MICHAEL UREEL and U.S. POSTAL SERVICE, POST OFFICE, Farmington Hills, MI

*Docket No. 97-1752; Oral Argument Held June 1, 1999;
Issued December 28, 1999*

Appearances: *William Dobreff, Esq.*, for appellant; *Paul J. Klingenberg, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the employee's death on January 16, 1996 occurred in the performance of duty.

On February 7, 1996 appellant filed a claim for death benefits (Form CA-5), with respect to the death of her husband in a motor vehicle accident on January 16, 1996. According to the evidence of record, the employee, a clerk, had worked at the Slocum Annex on the morning on January 16, 1996. The Annex is located at 33200 Slocum Street, Farmington Hills, Michigan. A coworker, Dean Zube, indicated in a narrative statement that both he and the employee were told to return back to the main post office, located approximately two and one-half miles north of the Annex on Twelve Mile Road, after their morning break. Mr. Zube reported that as they were leaving the Slocum Annex at approximately 11:00 a.m., the employee stated that he had left a leave slip (Postal Form 3971, used to request specific periods of annual leave for the remainder of the year) at his apartment, which was located approximately two and one-half miles away off Grand River Avenue. The employee stated that he would stop at his apartment and then return to the main office.

Appellant confirms that the employee entered the apartment, retrieved the leave form and then left the apartment. According to the police report, appellant was exiting from the private street where his apartment complex was located onto Grand River Avenue; his vehicle was struck by a motorist heading west on Grand River Avenue. From the drawing of the accident contained in the police report, it would appear that the employee was attempting to turn left (east) onto Grand River, since the position of his vehicle at impact revealed no attempt to enter the west bound traffic lane. The police report does not, however, make specific findings as to whether the employee was turning right or left and the report states that there were no independent witnesses.

In a decision dated March 22, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that the employee was not in the performance of duty at the time of his death. The Office found that appellant had deviated from the main business route for a personal errand and had not regained the main business route. By decision dated March 3, 1997, an Office hearing representative affirmed the March 22, 1996 decision.

The Board finds that the employee was in the performance of duty at the time of his death on January 16, 1996.

It is not disputed that when the employee left the Slocum Annex to return to the main post office he was on a business trip. He was directed by his supervisor to return to the main post office and was clearly serving his employer's interest in making the trip. It is well established that "an identifiable deviation from a business trip for personal reasons takes the employee out of the course of his employment until he returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial."¹ The initial question, therefore, is whether the employee deviated from a business trip for "personal reasons" when he went to his apartment to retrieve a leave request form.

Larson notes that deviations are seldom "easily defined," and the instant case is no exception. Appellant argues that submitting leave slips is a requirement of the job,² and therefore he was not on a personal errand. The issue, however, is whether the employee's decision to go home to his apartment while on a business trip was a deviation for personal reasons. Larson does not define the term "personal" in this context; generally such side trips as visiting a relative are found to be clearly personal in nature.³ In determining a business or personal purpose, the Board must look to whether the errand furthers the employers business. For example, in discussing dual purpose trips, Larson indicates that a business purpose can be found "if the trip involves the performance of a service for the employer..."⁴ In this regard, the Board cannot find that the employee's decision to retrieve a leave request form served a business purpose. Any benefit that would accrue from submitting a leave request on January 16, 1996, would accrue to the employee, not to the employer. Although requesting leave bears some relationship to his employment, the employee's decision to return home to retrieve a leave request slip must be considered a "personal" reason in this case.⁵ The Board finds that the side-trip to the employee's apartment was a personal errand that did not further the employers business.

¹ 1 A. Larson, *The Law of Workmen's Compensation*, § 19.00.

² Appellant indicated that the employment contract requires that leave applications be submitted on a Form 3971.

³ See *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996).

⁴ A. Larson, *The Law of Workmen's Compensation*, § 18.00.

⁵ Appellant argues that the employing establishment erred in that the leave form showed a due date of January 16, 1996, when the actual due date was the following day. The finding of error by the employing establishment may be relevant in a claim for an emotional reaction to an administrative matter; such analysis is inapplicable in a determination as to whether a side trip was personal or business in nature.

Having established that the employee was engaged in a personal errand, the next question is whether the deviation may be “insubstantial,” and therefore not remove the employee from the course of employment. Insubstantial deviations are “largely the kind of momentary diversions which, if undertaken by an inside employee working under fixed time and place limitations, would be compensable under the personal comfort doctrine.”⁶ The deviation in this case, to retrieve a leave slip, cannot be considered as ministering to a personal comfort need. It is therefore not considered to be an insubstantial deviation.

The next step in the analysis is to determine at what point the personal deviation occurred and whether, at the time of the accident, the employee had completed the personal errand and resumed his business route. The general rule is that, once a personal deviation has been completed and the main business route resumed, an employee is once again in the performance of duty.⁷ As Larson points out, “the first step in a clear analysis of any deviation case is to draw a picture of the entire trip.”⁸ In this case, we cannot be sure of the exact route taken by the employee, but some reasonable conclusions can be drawn. The main post office is approximately 2 and one-half miles north of the Slocum Annex. The most direct route appears to be Farmington Road. It is important to note that the employing establishment did not direct the employee to take a specific route, nor does the evidence show that there was a prescribed route between the Slocum Annex and the main post office. At the December 17, 1996 hearing, a coworker, Nancy May, testified that there were no assigned routes between the two sites and she had taken more than one route. Another coworker, Patrick Combon, indicated that he had taken several different routes between the two buildings, depending on the traffic in the area. A third coworker, Jim Anthony, confirmed that several routes were taken, depending on time of day, weather and traffic.

The Board accordingly finds that there were several routes between the two work sites that could have reasonably been taken by the employee. The hearing representative found that appellant “failed to take the most direct route (using Farmington Road),” but clearly the direct route north was not the only route that could be taken in this case. In reviewing the map contained in the case record, there are several routes involving Grand River Avenue: west on Grand River, then North on Drake Road; west on Grand River, past Drake Road and then north on Halsted, or west on Grand River, past Drake Road and Halsted, to the interstate 696 connector.

In this case, the employee left the Slocum Annex and presumably traveled west on Grand River Avenue, crossing Drake Road and then turning into the private drive that led to his apartment complex on Buchanan Court. The Director argues that the point of deviation is the intersection of Grand Avenue and Drake Road; the employee therefore had not yet returned to the point of deviation at the time of the accident. The Board finds, however, that continuing

⁶ 1 A. Larson, *The Law of Workmen’s Compensation*, § 19.63. An example of this personal comfort type of deviation is running across the street in the course of a delivery trip to buy food; see *Western Pipe Co. v. Industrial Acc. Commission*, 49 cal. App. 108, 121 P. 2d 35 (1942).

⁷ *Katherine A. Kirtos*, 42 ECAB 160 (1990); 1 A. Larson, *The Law of Workmen’s Compensation*, § 19.32.

⁸ 1 A. Larson, *The Law of Workmen’s Compensation*, § 19.10 (1990).

west on Grand River Avenue was an alternative business route and the point of deviation did not occur until appellant turned right into the private drive leading to his apartment complex. It is the Director's contention that even if Grand River Avenue between Drake and Halsted is an acceptable business route, at the time of the accident the employee was turning left (east) onto Grand River and, therefore, he must have been returning to Drake Road. If he was intending to return to Drake Road, then he did not resume his route until he reached that intersection. The Board is not persuaded by this argument. If Grand River Avenue, between Drake Road and Halsted, is on an acceptable business route, then the case cannot turn on whether the employee was intending to turn left (toward Drake Road) or right (toward Halsted). There is an identifiable point of deviation in this case, which is the point at which the employee turned off of Grand River Avenue onto the road leading to his apartment complex. As soon as he completed his personal side trip and resumed the business route where the accident occurred, the personal deviation had ceased. It does not matter if he intended to turn left to go to Drake Road or turned right to take Halsted or the freeway. Either way is part of an acceptable business route between the Slocum Annex and the main post office. Since the motor vehicle accident occurred just after the employee had entered onto Grand River Avenue, he completed his personal deviation and resumed his business route. Accordingly, the employee is found to be in the performance of duty at the time of his death on January 16, 1996 and appellant is entitled to appropriate death benefits.

The decision of the Office of Workers' Compensation Programs dated March 3, 1997 is reversed.

Dated, Washington, D.C.
December 28, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member