

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA MARGRETTA and U.S. POSTAL SERVICE,
POST OFFICE, Auburn, N.Y.

*Docket No. 97-603; Submitted on the Record;
Issued January 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant was in the performance of duty when she was injured on July 29, 1995.

Appellant, a letter carrier, filed a claim for multiple injuries sustained in a motor vehicle accident on July 29, 1995 at 11:50 a.m. in her postal vehicle. The Office of Workers' Compensation Programs denied appellant's claim by decision dated October 10, 1995 on the basis that, at the time of the July 29, 1995 accident, appellant had deviated from her route and was not in the performance of duty. Following a hearing held on May 15, 1996, an Office hearing representative, in a decision dated July 29, 1996, affirmed the Office's October 10, 1995 decision.

The Board finds that appellant was not in the performance of duty when she was injured on July 29, 1995.

The Board has stated that, for an injury to occur in the course of employment, it 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 she may reasonably be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.¹ The Board has also stated that a deviation from an employment trip for personal reasons, that is, one aimed at reaching some specific personal objective, takes an employee out of the course of employment until she returns to the route of the business trip unless the deviation is so insubstantial that it may be disregarded.²

¹ *Dannie G. Frezzell*, 40 ECAB 1291 (1989); *Carmine B. Gutierrez*, 7 ECAB 58 (1954).

² *Juan Antonio Bonilla*, 37 ECAB 598 (1986); *Ronda J. Zabala*, 36 ECAB 166 (1984); *James E. Johnson*, 35 ECAB 695 (1984).

In the present case, the evidence, consisting of appellant's and the employing establishment's statements and a map supplied by the employing establishment, clearly establishes that, at the time of the July 29, 1995 accident, appellant was at a place that was not on the postal route to which she was assigned. Appellant contends that the deviation from her route was to seek personal comfort; specifically, to travel to a convenience store located on her former postal route to obtain water and to get out of her hot vehicle and relax.

Acts of personal comfort -- eating a snack, using the bathroom, or drinking water or other beverages -- are considered to be in the performance of duty.³ What removed appellant from the performance of duty was her decision to travel to the convenience store over two miles from her route,⁴ rather than to obtain the needed water at a store on her route that was designated by the employing establishment as an authorized break location. Although appellant testified that she did not know that this store, which she passed within one block during her trip to the more distant convenience store, was the authorized break location, she also testified that she was aware of the store on her route but chose not to go there because the street was narrow. Appellant's personal preference for the more distant convenience store made the trip there a personal mission, rather than an activity incidental to her employment, and placed her, at the time of the accident, at a place where she would not reasonably be expected to be in connection with her employment. For these reasons, she was not in the performance of duty when injured on July 29, 1995.

The decision of the Office of Workers' Compensation Programs dated July 29, 1996 is affirmed.

Dated, Washington, D.C.
January 8, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988); *Mary M. Martin*, 34 ECAB 525 (1983); *Frank M. Escalante*, 13 ECAB 160 (1961).

⁴ Appellant disputed the distance, but did not present any evidence to support her assertion that the distance was far less than two miles.

Alternate Member