

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. WALULIS and DEPARTMENT OF THE NAVY,
NAVAL ELECTRONICS SYSTEMS COMMAND, San Diego, CA

*Docket No. 98-769; Submitted on the Record;
Issued October 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on September 1, 1997.

In the present case, appellant, then a 54-year-old electronics technician, alleged that he sustained a cervical injury on September 1, 1997 at 7:00 p.m., while moving luggage at home. Appellant explained that he had finished packing his bags for a temporary-duty assignment and had placed his bags near the front door, in preparation for a trip to Japan which was to commence the next morning, when he sustained his injury. The Office of Workers' Compensation Programs denied appellant's claim by decision dated October 16, 1997 on the grounds that the injury was not sustained in the performance of duty. The Office denied modification of the prior decision, after merit review, on December 19, 1997.

The Federal Employees' Compensation Act¹ 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' compensation law of "arising out of and in the course of employment."²

¹ 5 U.S.C. § 8102(a).

² *Bernard D. Blum*, 1 ECAB 1 (1947).

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.”³

Where an employee is on a temporary-duty assignment away from his regular place of employment, he is covered by the Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.⁴ While injuries occurring to employees while on temporary-duty status during required travel are therefore generally compensable, in the present case, appellant was not on temporary-duty status at the time of his injury.

The record contains a copy of the request and authorization for travel of Department of Defense (DOD) personnel, issued on August 22, 1997, which authorizes appellant’s travel from San Diego, California, to Yokosuka, Japan, for 10 days commencing September 2, 1997. Appellant’s injury occurred at home, on September 1, 1997, the evening before he entered travel status. Appellant’s temporary travel status commencing September 2, 1997 did not bring his injury within the performance of duty as appellant was not in temporary travel status at the time of injury.

Appellant is essentially alleging that his injury should be compensable because he was preparing for his employment-related trip at the time the injury occurred. Preparation for work which occurs at home and prior to work hours is not generally compensable pursuant to the Act. The Board has accepted the general rule of workers’ compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours, or at lunch time, are compensable. Given this rule, the Board has also noted that the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts.⁵ In this case, appellant’s injury occurred at home, not on the premises of the employing establishment in preparation for work the next day. The Board has

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

⁴ *Carl Paul Johnson*, 39 ECAB 470 (1988).

⁵ *Dwight D. Henderson*, 46 ECAB 441 (1995).

not extended the course of employment to include activities performed at home, in preparation for work the following day. The Office therefore properly found that appellant's injury was not sustained in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated December 19 and October 16, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 7, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member