

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANET R. LANDESBERG and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Harrisburg, PA

*Docket No. 98-1812; Oral Argument Held April 20, 1999;  
Issued September 10, 1999*

Appearances: *Janet R. Landesberg, pro se; Paul J. Klingenberg, Esq.,*  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

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

The issue is whether appellant has established an injury in the performance of duty on May 1, 1997.

In the present case, appellant filed a claim alleging that she sustained injuries when she was involved in a motor vehicle accident in an Arlington, Virginia, parking lot on May 1, 1997. The pertinent facts do not appear to be in dispute. Appellant, an administrative law judge, left her office in Harrisburg, Pennsylvania, at approximately 1:30 p.m. on Thursday, May 1, 1997 to attend a seminar, sponsored by the American Bar Association, entitled "Judicial Approach to Technical Evidence & Expert Witnesses." The seminar was to be held on May 2, 1997 in Washington, DC. Although appellant lived and worked in Harrisburg during the week, she owned a townhome with her husband in Arlington, Virginia, and, after briefly stopping at her townhome on May 1, 1997, she traveled to a take-out restaurant in Arlington, where she was involved in a motor vehicle accident in the parking lot at approximately 4:30 p.m. With respect to the employing establishment's authorization for her travel, the record contains a completed form (HHS 350) signed by appellant's supervisors that authorized eight hours of official time for attendance at the seminar on May 2, 1997. The form indicated that appellant was paying the cost of the seminar and the employing establishment was not providing reimbursement for travel or other expenses. Appellant also indicated that she received an additional one hour of administrative leave for travel on May 1, 1997.

By decision dated August 6, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that the injury did not occur in the performance of duty. By decisions dated November 7, 1997 and May 15, 1998, the Office denied modification of the prior decision.

The Board finds that appellant's injury was not sustained while in the performance of duty.

It is well established under workers' compensation laws that an employee whose work entails travel away from the employer's premises is within the course of employment continuously during the trip, except when a distinct departure on a personal errand is shown.<sup>1</sup> The Board has recognized that the Federal Employees' Compensation Act covers an employee 24 hours a day when he or she is on a travel status or on a temporary-duty assignment or a special mission and engaged in activities essential or incidental to such duties.<sup>2</sup>

In the present case, appellant argues that she was in a travel status from the time she left Harrisburg on May 1, 1997 and therefore she falls within the general rule covering an employee for all activity incidental to her travel status. The Board finds, however, that the facts in this case do not establish that she was in a travel status that would bring her accident in Arlington, Virginia, within the scope of coverage under the Act.

With respect to attendance at conventions, seminars or professional meetings, the general rule states that compensability turns on "whether the claimant's contract of employment contemplated attendance as an incident of his work."<sup>3</sup> As noted by Larson in his treatise on workers' compensation law, "It is not enough that the employer would benefit indirectly through the employee's increased knowledge and experience."<sup>4</sup> In determining whether attendance at a seminar was contemplated as an incident of work, there are several factors that must be examined to determine the degree to which the employer viewed attendance as an incident of work. For example, if the employer required an employee to attend a seminar or conference, this would be probative evidence that attendance was contemplated as an incident of work.

In the case of *Sondra J. Mills*,<sup>5</sup> the Board discussed some of the relevant factors regarding attendance at seminars or conferences. In *Mills*, the claimant was injured in a motor vehicle accident while returning from a union steward training seminar. The Board stated in pertinent part,

"Although the record shows that the employing establishment granted appellant eight hours of administrative leave to attend the training seminar, this fact does not establish that appellant's injury was sustained in the performance of duty.... She received no travel expenses or *per diem* allowance from the employing establishment. The employing establishment did not organize the seminar nor did it exercise control over appellant's activities. There is no evidence in the record

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<sup>1</sup> 1A A. Larson, *The Law of Workers' Compensation* § 25.00 (1993).

<sup>2</sup> See *Richard Michael Landry*, 39 ECAB 232 (1987) and the cases cited therein.

<sup>3</sup> *Lindsey A.C. Moulton (David G. Moulton)*, 39 ECAB 434 (1988).

<sup>4</sup> 1A A. Larson, *The Law of Workers' Compensation* § 27.31(c) (1993).

<sup>5</sup> 33 ECAB 1092 (1982).

that appellant was on a special mission. For these reasons, appellant's injury was not sustained in the performance of duty."

It is evident that the critical factors to be examined relate to the degree of control that the employing establishment exercised over the seminar or convention and appellant's attendance thereof. Such issues as whether the employing establishment paid for travel or other expenses associated with attendance at the seminar and whether the employing establishment sponsored or organized the seminar, are critical to the determination of whether attendance at a seminar is considered as an incident of work. In this case, the employing establishment did not pay for travel expenses or any other costs associated with attendance at the seminar, nor did it sponsor or organize the seminar.<sup>6</sup> The authorization for attendance was limited to the granting of administrative leave for travel to and attendance at the seminar. The *Mills* case clearly establishes that the granting of administrative leave does not, in and of itself, bring the activity within the performance of duty. The Board finds that there is simply not a sufficient nexus between the employing establishment and the May 2, 1997 seminar at issue in this case. Appellant was not required to attend, the employing establishment did not sponsor the event nor provide reimbursement for expenses incurred.

Appellant argues that the *Mills* case may be distinguished on its facts from the present case. She notes that in *Mills* the claimant was attending a union steward training seminar, whereas in this case appellant was attending a seminar relevant to the performance of her job duties. According to appellant, the seminar was therefore part of the employer's business and of benefit to the employer. In support of her argument she noted that administrative law judges were limited to two days of administrative leave to attend professional courses directly related to their work and the only reason that expenses were not paid was due to budget constraints.<sup>7</sup> Appellant also noted that the authorization form signed by her supervisors was a "Training Nomination and Authorization Form," as opposed to a request for "approval of outside activity," which required the submission of a different form.

It is not disputed that the May 2, 1997 seminar was relevant to appellant's job duties and would presumably have been of benefit to appellant in the performance of those duties and therefore a benefit to her employer as well. As noted above, however, "it is not enough that the employer would benefit indirectly through the employee's increased knowledge and experience."<sup>8</sup> In the *Mills* case, the Board did not base its decision on the subject matter of the seminar, but rather the lack of involvement by the employing establishment with respect to appellant's attendance at the seminar. In order to find that attendance at a seminar or convention is contemplated as an incident of work, there must be evidence that establishes a close

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<sup>6</sup> Appellant indicated that a few of the panelists at the seminar were coworkers, but there is no indication that the employing establishment was involved in the organization or sponsorship of the seminar.

<sup>7</sup> The record contains a March 6, 1997 memorandum from the chief administrative law judge that provides guidelines for continuing legal education training. The guidelines indicate that up to two days of official time would be granted to attend professional courses directly related to an administrative law judge's work, but "due to budget constraints," expenses would not be paid by the employing establishment.

<sup>8</sup> 1A A. Larson, *The Law of Workers' Compensation* § 27.31(c) (1993).

relationship between the employer and the employee's attendance at the seminar. In the absence of such indicators as a requirement to attend, payment of travel and related expenses, or active participation by the employing establishment in organizing and sponsoring the seminar, the Board cannot find that the May 2, 1997 seminar was contemplated as an incident of work.

Accordingly, the Board finds that appellant was not in an official travel status when she left Harrisburg on May 1, 1997. Appellant was not in the performance of duty during her travel to Arlington, during the time she went to a restaurant and was involved in a motor vehicle accident, nor would she have been in the performance of duty had she actually attended the seminar on May 2, 1997. The Office therefore properly denied the claim in this case.

The decision of the Office of Workers' Compensation Programs dated May 15, 1998 is affirmed.

Dated, Washington, D.C.  
September 10, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member