

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

*Docket No. 98-1736; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on December 18, 1996, as alleged.

On November 12, 1997 appellant, then a 59-year-old FSM operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she suffered trauma and a lumbar sacral sprain when she was involved in a "car accident" on December 18, 1996 at 2:30 p.m. at Plainfield Avenue and Greenwood Avenue in Edison, New Jersey. The employing establishment controverted the claim, contending that appellant "was not on the clock and not on postal premises when car accident occurred." Specifically, the employing establishment contends that the alleged accident occurred while appellant was "on her way to work." The employing establishment indicated that appellant's regular working hours were from 3:00 p.m. to 11:30 p.m., Monday through Friday.

By letter dated December 9, 1997, the Office of Workers' Compensation Programs requested further factual and medical information from appellant. Appellant did not respond to this letter.

By decision dated April 25, 1998, the Office denied appellant's claim on the grounds that she did not establish that she was injured in the performance of duty. The Office explained that the submitted evidence was insufficient to establish that "the event arose out of and in the course of employment because you were en route to work." The Office added that injuries occurring while traveling to or from work are not compensable "for an employee with a fixed workplace and fixed hours who is not on a special mission for employer."

Appellant submitted no evidence in support of her claim.

The Board finds that appellant has not established that she sustained an injury in the performance of duty on December 18, 1996, as alleged.

The Board notes that as a general rule, off premises injuries sustained by employees having fixed hours and places 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. Such injuries are

merely the ordinary, nonemployment hazards of the journey itself which are shared by all travelers. There are recognized exceptions which are dependent upon the particular facts relative to each claim. They pertain to the following instances: (1) where the employer 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; and (4) where the employee uses the highway to do something incidental to his employment with the knowledge and approval of the employer.¹

The record reveals that appellant's tour of duty was Monday through Friday from 3:00 p.m. to 11:30 p.m. She injured herself while traveling in an automobile at 2:30 p.m. The employing establishment controverted the claim, stating that appellant was not in the performance of duty at the time of the alleged injury as she was en route to work. As appellant had fixed hours and a place of work, the Board finds that she is a "fixed premises" employee. Appellant did not respond to the Office's request for additional information as to whether her injuries arose out of and in the course of her employment. Thus, there is no evidence of record to bring appellant's alleged injury into any of the recognized exceptions. Therefore, appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on December 18, 1996, as alleged.

The decision of the Office of Workers' Compensation Programs dated April 25, 1998 is affirmed.

Dated, Washington, D.C.
January 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ *Kurt A. Hickman*, 50 ECAB ____ (Docket No. 97-1042, issued January 5, 1999).