U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUZ N. FIQUEROA and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

Docket No. 99-1050; Submitted on the Record;
Issued May 26, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on December 2, 1997.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 2, 1997.

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming from work or lunch, are not compensable as they do not arise out of and in the course of employment. When an employee has a definite place and time for work and the time for work does not include the lunch period, the trip away from and back to the premises for the purposes of getting lunch is indistinguishable in principle from the trip at the beginning and end of the workday and is governed by the same rules and exceptions. These exceptions have developed where the hazards of the travel may fairly be considered a hazard of the employment and are dependent upon the particular facts and related to situations: "(1) Where the employment 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]

On September 2, 1998 appellant, then a 37-year-old casual postal clerk, filed a claim alleging that she sustained an employment-related broken arm on December 2, 1997. Appellant stated, "I was a passenger in [a] vehicle returning as ordered by my employer. [The] injury occurred during car collision on my way to P1."[2] On the reverse of the form, a supervisor stated that appellant was "involved in [a] car accident after normal work schedule." The supervisor

[1] *Donna K. Schuler*, 38 ECAB 273-74 (1986).

[2] Appellant indicated that the injury occurred at 10:25 p.m.

noted, "Employee states she was told to travel back to processing annex. In a service talk all employees were told not to travel between buildings." By decision dated October 28, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not sustain an injury in the performance on duty on December 2, 1997. The Office noted that appellant was off duty and off the employment premises when the accident occurred and that she was not furthering an employment purpose at the time of the accident.

In the present case, the evidence of record establishes that appellant was off duty and off the employment premises at the time of her claimed injury on December 2, 1997. Moreover, appellant has not shown that her actions at the time of her claimed injury were connected to her work in such a manner that one of the exceptions to the general rule of noncompensability for off-premises injuries would apply.[3]

Regarding the circumstances of the claimed injury, the record contains a September 18, 1998 statement from an injury compensation specialist at the employing establishment and the memorandum of a conference held on September 28, 1998 between an Office claims examiner and two other injury compensation specialists at the employing establishment. The evidence from the employing establishment reveals that appellant was off duty at the time of the claimed injury and that the injury occurred on 44th Street, a public road off the employment premises.[4] The evidence further reveals that appellant was not required to travel on the highway by the employing establishment or otherwise traveling on the highway to do something incidental to her employment with the knowledge and approval of the employing establishment. The employing establishment indicated that, after clocking out, appellant left work at the P2 Building, work facility, to proceed to pick up her car which was parked at the P1 Building, another work facility. It noted that appellant was not required to park at the P1 Building but did so for her convenience. The employing establishment noted that appellant was a casual postal clerk and that it was not part of her duties to travel between the work facilities.

Appellant claimed that, at a time of her injury, she was engaged in an action, *i.e.*, driving to another work facility, which she was directed to perform by the employing establishment. Appellant did not submit evidence to support this assertion. The Office requested that appellant submit additional factual evidence in support of her claim, but she did not respond to this request within the time allotted by the Office. Appellant was engaged in a personal action at the time of her claimed injury and was exposed to the same risks as those encountered by the general public. For these reasons, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 2, 1997.

[3] It is further noted that appellant is not the type of employee who performs her duties on the employment premises for only part of the day, such as a mail carrier and, therefore, the Office procedure governing this type of employee is not relevant to the present case; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5c (August 1992).

[4] The employing establishment indicated, "she clocked out of work at 22:42 hours which is converted to 10:25 p.m."

The decision of the Office of Workers' Compensation Programs dated October 28, 1998 is affirmed.[5]

Dated, Washington, D.C.
May 26, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[5] Appellant submitted additional evidence after the Office's October 28, 1998 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).