U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL BOWMAN and U.S. POSTAL SERVICE,
POST OFFICE, Lawrence, KS

Docket No. 99-1097; Submitted on the Record;
Issued May 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on July 7, 1998.

On August 5, 1998 appellant, then a 54-year-old administrative assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 7, 1998 she sustained a crushed pelvis when she was struck by a vehicle while returning from lunch. Appellant's supervisor indicated on the reverse side of the claim form that appellant was returning to work from the street across from the employing establishment when she was struck by a car. Appellant has since not returned to work.[1]

A witness reported that on July 7, 1998 someone came into the employing establishment and said that a car at 7th and Vermont had struck a woman. The witness stated that she did not see the accident but found appellant in the intersection just before the medical technicians arrived. According to an employing establishment accident report, appellant was on her lunch break on July 7, 1998 when at approximately 1:08 p.m. she crossed 7th Street at Vermont Street from the southeast to the northeast corner in order to return to work.[2] The report noted that, when appellant reached the middle of the intersection, a vehicle struck her.

The employing establishment controverted appellant's claim for compensation and advised the Office of Workers' Compensation Programs that appellant had been injured while off premises during her lunch break and was not on the clock at the time of the injury.

[1] The record indicates that Dr. Greg A. Horton, an attending physician specializing in orthopedic surgery, treated appellant for a broken left leg, hip and pelvis and that she sustained cuts, abrasions and chipped teeth associated with the July 7, 1998 incident.

[2] The employing establishment address is 645 Vermont Street. The 600 and 700 blocks of Vermont are divided at 7th and Vermont, which suggests that appellant's injury occurred approximately a half-block away from work.

By decision dated November 20, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish that an injury was sustained in the performance of duty. The Office found that appellant had signed out for lunch and left the premises of her employing establishment and was not on federal property at the time of the injury, but on a city street. The Office concluded, therefore, that the injury was not considered to have arisen out of the course of her employment and she was not in the performance of duty at the time of the injury.

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 July 7, 1998.

The Federal Employees' Compensation Act[3] provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The term while in the performance of duty has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation of arising out of and in the course of employment. The phrase in the course of employment is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury arising out of the employment must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefit is derived or an employment requirement gave rise to the injury.[4]

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) [w]here the employer contracts to and does furnish transportation to and from work; (3) [w]here the employee is subject to emergency calls as in the case of firemen; and (4) [w]here the employee

[3] 5 U.S.C § 8102(a).

[4] *Charles Crawford*, 40 ECAB 474 (1989); *Eugene G. Chin*, 39 ECAB 598 (1988).

uses the highway to do something incidental to his employment, with the knowledge and approval of the employer."[5]

In the present case, the evidence establishes that there were no employment factors involved in appellant's journey for lunch on July 7, 1998, which occurred off the premises of the employing establishment. The record indicates that at the time appellant was struck by a motor vehicle, she was at a public intersection during her lunch period.[6] There are no factors in this case to bring it within the recognized exceptions to the general rule regarding the noncompensability of off-premises injuries. The hazards of appellant's travel to and from lunch that day were not incidental to her employment.

Closely allied to the "off-premises" exception is the "proximity" rule which the Board has defined by stating that under special circumstances the industrial premises are constructively extended to hazardous conditions which are proximately located to the premises and may therefore be considered as hazards of the employing establishment.[7] The main consideration in applying the rule is whether the conditions giving rise to the injury are causally connected to the employment.[8]

The proximity rule defined by the Board does not apply to the circumstances of this case. Appellant's injury arose as a result of being struck by a moving vehicle while on a public street and is an example of a hazard common to all travelers on public streets. The record does not establish that the intersection at 7th Street and Vermont Street was so connected with the employing establishment as to be constructively considered part of its premises. The employing establishment did not own, control or have any managerial responsibility over that area where the claimed injury occurred, and further, because appellant clocked out before she left the premises on July 7, 1998, her employing establishment had no control over her actions whatsoever during that time.[9] Appellant's activity of walking back to work from lunch was in the nature of a personal activity and not one that was causally connected to her employment.

For the reasons set forth above, the Board finds that appellant has not established that the claimed injury arose in the course of her employment on July 7, 1998 and, therefore, she did not sustain an injury in the performance of duty on that date.

[5] *Donna K. Shuler*, 38 ECAB 273, 274 (1986).

[6] *See Jacqueline Nunnally-Dunord*, 36 ECAB 217 (1984).

[7] *See William L. McKenney*, 31 ECAB 861 (1980); A. Larson, *The Law of Workers' Compensation* § 15.13.

[8] *Diane Bensmiller*, 48 ECAB 675 (1997).

[9] *Mary Keszler*, 38 ECAB 735 (1987).

The decision of the Office of Workers' Compensation Programs dated November 20, 1998 is affirmed.

Dated, Washington, D.C.
May 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member