U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK LOVE and U.S. POSTAL SERVICE,
RIVERSIDE MAIN POST OFFICE, Riverside, CA

Docket No. 01-85; Submitted on the Record;
Issued August 29, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant was injured in the performance of duty.

On June 26, 1999 appellant, then a 49-year-old letter carrier, was riding his bicycle to work when he lost control of his bike while entering the employing establishment's parking lot after hitting an unknown object on the road. He sustained a fracture of the right clavicle. Appellant stopped working that day, attempted to return to work on September 13, 1999 and returned to light duty on October 15, 1999. He filed his claim for compensation on December 2, 1999, stating that he had been unaware previously that an injury before clocking in was covered by workers' compensation.

In a December 8, 1999 memorandum, appellant's supervisor stated that appellant informed her on June 26, 1999 that he had just crashed his bike and thought he had broken his shoulder. He indicated that the injury occurred as he was turning into the parking lot. She related that, when asked, appellant stated that he was not on postal property when he fell. The employing establishment submitted a diagram which showed appellant fell on the sidewalk in front of the employing establishment, after entering the driveway that led to the employing establishment's parking lot but before he reached the parking lot.

The employing establishment submitted a report of an investigative interview with appellant. In response to questions, appellant indicated that he fell on the sidewalk in front of the employing establishment. He stated that he filed the claim because the accident occurred while he was on his way to work, on his regular line of travel to work. In response to the question "So the reason for filing is not that you believe the accident occurred on postal property," appellant answered, "No, I filed because it occurred on my way to work."

In a January 10, 2000 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that he had not established that he was injured on the premises of the employing establishment.

In a January 28, 2000 letter, appellant's representative requested a hearing before an Office hearing representative. At the June 26, 2000 hearing, appellant submitted photographs to illustrate the area in which he fell. He testified that he was unsure where he fell but believed that he had fallen at least partially on the employing establishment's parking lot.

In a September 12, 2000 decision, the Office hearing representative found that appellant had not established that the accident occurred on the premises of the employing establishment and therefore appellant could not be considered to have sustained an injury in the performance of duty. The hearing representative therefore affirmed the Office's January 10, 2000 decision.

The Board finds that appellant was not injured in the performance of duty.

The Federal Employees' Compensation Act[1] provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[2] In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[3] The Board has stated as a general rule that off premises injuries sustained by employees having fixed hours and place 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 but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[4]

In defining what constitutes the premises of an employing establishment, the Board has said:

> "The 'premises' of the employer, as the term is used in workmen's compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of the legal title."[5]

In this case, appellant had fixed hours of work. He was injured as he was traveling to work. He could not establish that he fell on the premises of the employing establishment when he fell on June 26, 1999. The evidence of record establishes that appellant's injury occurred on the sidewalk in front of the employing establishment. There is no evidence that his fall and resultant injury occurred on property owned or controlled by the employing establishment. He therefore did not establish that he was injured on the premises of the employing establishment. In this case, appellant has not shown that the sidewalk on which he fell was used exclusively or principally by employees of the employing establishment for the convenience of the employer.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] *Conrad F. Vogel*, 47 ECAB 358 (1996).

[4] *Robert F. Hart*, 36 ECAB 186 (1984); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

[5] *See Conrad F. Vogel*, *supra* note 3.

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

The employing establishment did not own the sidewalk and was not responsible for the maintenance of the sidewalk. Thus, appellant's injury is considered to be an ordinary, nonemployment hazard of the journey itself, shared by all travelers.[7]

Under the facts of this case, it also cannot be said that appellant's injury occurred within the special hazard exception to the premises rule. The Board has determined that under special circumstances the "premises rule" is extended to hazardous conditions which are proximately located to the premises and therefore may be considered as hazards of the employing establishment. This exception to the premises rule contains two components. The first is the presence of a special hazard at the particular off premises route. The second is the close association of the access route to the employing establishment, such that ingress and egress from the employing establishment must be made from this route.[8] In this case, as appellant has not established a special hazard at the point where he fell, it is not necessary to examine whether the injury occurred on the route employees must traverse to reach the employing establishment.

The case record does not establish that the sidewalk used by appellant was so connected with the employing establishment as to be considered part of the premises of the employing establishment. Therefore, appellant has not established that he sustained an injury in the performance of duty.

[7] *Shirley Borgos*, 31 ECAB 222 (1979).

[8] *See Jimmie D. Harris, Sr*., 44 ECAB 997 (1993)

The decisions of the Office of Workers' Compensation Programs, dated September 12 and January 10, 2000, are hereby affirmed.

Dated, Washington, DC
August 29, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member