U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. FRANKS and DEPARTMENT OF THE ARMY, ARMY DEPOT, Tobyhanna, PA

Docket No. 01-510; Submitted on the Record;
Issued August 15, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on July 10, 2000.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an injury while in the performance of duty on July 10, 2000.

On July 10, 2000 appellant, then a 59-year-old electronics mechanic, filed a traumatic injury claim alleging that on that date he stepped on a stone in the main parking lot, twisted his right ankle and fell on his right hip. Appellant indicated that his injury occurred at 6:50 a.m. On the reverse side of the claim form, appellant's supervisor, Charles Benward, stated that appellant was walking from his car to his work area before starting work.

By letter dated August 16, 2000, the Office of Workers' Compensation Programs requested that appellant explain what he was doing in the main parking lot 45 minutes before his shift started. In a letter of the same date, the Office requested that the employing establishment provide whether appellant usually arrived for work 45 minutes before his shift started, and when appellant signed in and began working on the date of injury. The record indicates that appellant's regular work hours are from 7:30 a.m. to 4:00 p.m.

In an August 22, 2000 response, Mr. Benward stated that appellant reported to work as usual that day and signed in. He further stated that he had no record as to what time appellant signed in because they do not use time clocks.

In a response of the same date, appellant stated that "My usual time for arriving in the main parking lot is approximately 40-45 minutes early. Reason being is that I go to the cafeteria for breakfast and coffee, and also I have approximately a 7/8 of a mile walk to my work site. Plus I do not want to be late for work."

By decision dated September 27, 2000, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty.

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place when he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. As to this phrase, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours of places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours, or at lunch time, are compensable.[4]

In this case, appellant's fall occurred prior to his official starting time. Further, there is no dispute that the parking lot where appellant stepped on a stone was on the employing establishment's premises.

However, appellant's task of getting breakfast prior to his official starting time is personal in nature inasmuch as appellant was not reasonably fulfilling the duties of his employment as an electronics mechanic. Further, appellant's task of getting breakfast cannot be likened to those incidental acts such as using a toilet facility,[5] drinking coffee and similar beverages, or eating a snack during recognized breaks in the daily work hours. These are generally recognized as personal ministrations so that engaging in such activity does not take an employee out of the course of his employment.[6] The task of getting breakfast is not considered an activity, which is necessary for personal comfort, or personal ministration, and therefore is not incidental to appellant's employment.[7] This, coupled with the length of time that appellant arrived at the employing establishment prior to his official starting time, placed the activity in this case outside the scope of the employment.

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum,* 1 ECAB 1 (1947).

[4] *Narbik A. Karamian,* 40 ECAB 617, 618 (1989).

[5] *Frank M. Escalante,* 13 ECAB 160 (1961).

[6] *Helen L. Gunderson,* 7 ECAB 707 (1955).

[7] *Nona J. Noel,* 36 ECAB 329 (1984).

The Board, therefore, finds that the right ankle and right hip injuries sustained by appellant on July 10, 2000 were not sustained while he was in the performance of duty, inasmuch as they did not arise in the course of his employment.

The September 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member