U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN A. TUEL-GILLEM and U.S. POSTAL SERVICE, POST OFFICE, Chadds Ford, PA

Docket No. 00-2124; Submitted on the Record;
Issued July 18, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on February 1, 2000.

On February 1, 2000 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim alleging that on that day she fractured her right ankle when she slipped on ice in her driveway while walking to her private motor vehicle.

In a memorandum of a telephone conference held on March 23, 2000, an Office of Workers' Compensation Programs' claims examiner stated that appellant was required to use her own vehicle in her job as a rural carrier and drove to the employing establishment each morning, cased mail from three to five hours, delivered mail on her route using her vehicle, returned to the employing establishment and unloaded her car and then returned home. The claims examiner related that, on the morning of February 1, 2000, appellant was walking on the driveway in front of her residence, approaching her vehicle, when she slipped on ice and fell.

By decision dated May 5, 2000, the Office denied appellant's claim on the grounds that the evidence of record did not establish that her injury was sustained in the performance of duty.[1]

The Board finds that appellant did not sustain an injury on February 1, 2000 in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the

[1] Subsequent to the issuance of the Office's May 5, 2000 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

[2] 5 U.S.C. §§ 8101-8193.

individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act. An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged, that the injury was sustained while in the performance of duty and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated the following:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[5]

It is a well-settled principle of workers' compensation law that where "the employee as part of his or her job is required to bring along his or her own car, truck or motorcycle for use during the working day, the trip to and from work is by that fact alone embraced within the

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[5] *See Allan B. Moses*, 42 ECAB 575, 581 (1991).

course of employment."[6] Accordingly, an injury sustained while traveling to and from work may be within the performance of duty for that employee.[7] The theory behind this rule is in part related to that of the employee conveyances, *i.e.*:

> "The obligations of the job reach out beyond the premises, make the vehicle a mandatory part of the employment environment and compel the employee to submit to the hazards associated with private motor travel, which otherwise he or she would have the option of avoiding. But in addition there is at work the factor of making the journey part of the job, since it is a service to the employer to convey to the premises a major piece of equipment devoted to the employer's purposes."[8]

Accordingly, because rural carriers may use their own transportation to deliver their routes, which is a benefit to the employer, they may be deemed to be in the performance of their duties when they are driving their vehicles to and from their route when they are required by the employing establishment to provide their own transportation. In this case, appellant was leaving her residence and approaching her vehicle to leave for work at the time of her injury. Regardless of whether she used her private vehicle in the course of her employment, the act of leaving one's residence to get to work would remain the same and is an activity that all employees engage in. There is a presumption that the trip to work of an employee with fixed hours and place of work is no different from that of any other employee with fixed hours and place of work. However, in the case of employees furnishing their own conveyance, such as rural carriers, coverage is extended when the employee is in the vehicle and driving to and from work because she is required to take her vehicle with her to perform her regularly assigned duties.[9] It is at the point that she enters her vehicle that she would be considered to be in the performance of her duties.

As appellant sustained an injury in the driveway in front of her residence as she was approaching her vehicle, the Board finds that she has not sustained an injury in the performance of duty.

[6] A. Larson, *The Law of Workers' Compensation*, § 15.05 (2000); *Ronda J. Zabala*, 36 ECAB 166 (1984).

[7] *Ronda J. Zabala, supra* note 6.

[8] *Larson*, § 15.05.

[9] *Id.*

The May 5, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member