U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA GREENE and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

Docket No. 00-1445; Submitted on the Record;
Issued May 4, 2001

DECISION and ORDER

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

The issue is whether appellant sustained an injury on November 5, 1999 in the performance of duty as alleged.

On December 17, 1999 appellant, then a 38-year-old mark-up clerk, filed a traumatic injury claim alleging that on November 5, 1999 she sustained burn injuries when she plugged her portable television/radio with headphones into an adapter at work. She alleged that the headphones ignited and she received first-degree burns on her neck and upper back, second-degree burns on her ear and burned her hair. Appellant stopped work that day and returned on November 8, 1999.

On January 11, 2000 the Office of Workers' Compensation Programs advised appellant to submit medical evidence supportive of her claim. Appellant did not respond to the Office request. Treatment notes, submitted by the employing establishment, confirmed that appellant received first and second-degree burns on her left ear, neck and shoulder on or about November 5, 1999. The employing establishment informed the Office that the portable television/radio, which caused appellant's injury, was not owned, controlled or required by the employing establishment as a part of her work duties.

By decision dated February 15, 2000, the Office denied appellant's claim on the basis that she failed to provide sufficient evidence to establish that she was injured in the performance of duty, as required by the Federal Employees' Compensation Act.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

The 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

[1] 5 U.S.C. §§ 8101-8193.

"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] "Arising in the course of employment" relates to the elements of time, place and work activity. An injury is said to arise in the course of employment when it takes place within the period of the employment, at a place where the employee reasonably may be, and while she is fulfilling her duties or engaged in doing something incidental thereto. "Arising out of employment" relates to the causal connection between the employment and the injury claimed.[4]

With respect to whether appellant's injury arose in the course of employment, the Board finds that appellant has met the criteria of time and place: there is no dispute that the injury occurred during appellant's regular shift while on the premises of the employing establishment. The Board finds, however, that appellant's injury did not arise in the course of employment because at the time of her injury she was neither fulfilling the duties of her employment nor engaged in doing something incidental thereto.

The factual evidence submitted in this case established that appellant was not engaged in an activity contributing to the accomplishment of her assigned duties. It is well established, however, that work-connected activity goes beyond the direct services performed for the employer and includes at least some ministration to the personal comfort and human wants of the employee.[5] Activities encompassing personal acts for the employee's comfort, health, convenience and relaxation; eating meals, lunches and snacks on the premises, including established coffee breaks; and the employee's presence on the premises for a reasonable time before or after specific working hours, are reasonably incidental to employment and are, therefore, in the course of employment.[6] Even if the activity cannot be said to advance the employer's interest, it may still be in the course of employment if, in view of the nature of the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the conditions of that employment.[7]

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[2] *Id*. at § 8102(a).

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

[4] *Eugene G. Chin*, 39 ECAB 598 (1988); *see Charles Crawford*, 40 ECAB 474 (1989) (the phrase "arising out of and in the course of employment" encompasses not only the concept that the injury occurred in the work setting, but also the causal concept that the employment caused the injury); *see also Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

[5] 1A A. Larson, *The Law of Workmen's Compensation* § 20.10 at page 5-1 (1992).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4(a) (August 1992).

[7] Larson, *supra* note 5 at § 20.00.

The evidence developed in this case establishes that appellant was engaged in a personal activity of using her own portable television/radio with headphones during her work shift and that this piece of equipment, which caused her injury, was not required by the employing establishment to perform her duties. There is no other evidence of record to suggest that the employing establishment by custom or practice encouraged the use of such equipment by employees while performing their postal duties. Further, the use of portable television/radios does not fall into a class of activity closely related to personal ministrations considered to be incidental to employment.[8] The Board therefore finds that appellant's use of a portable television/radio was not incidental to her employment, and as such, the injury sustained while plugging the equipment into an adapter at work was not sustained in the performance of duty.[9]

The February 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[8] *See JoAnn Curtis*, 38 ECAB 122 (1986).

[9] Appellant submitted an accident report on appeal, which had not been reviewed by the Office at the time of its February 15, 2000 decision. The Board does not have jurisdiction to review this evidence for the first time on appeal as its review of a case is limited to the evidence in the case record, which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c).