

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA D. HEAVENER and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, MD

*Docket No. 00-1453; Submitted on the Record;  
Issued October 3, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on March 2, 1998.

On March 10, 1998 appellant, then a 48-year-old office assistant, filed a claim alleging that on March 2, 1998 at 11:00 a.m., her legs gave out causing her to fall just outside the doors to her office building. She indicated that she sustained a cut on the head, a bruised and sprained knee, a black eye, and bruised ribs and elbow. Appellant's supervisor completed the claim form, indicating that appellant was not injured while in the performance of duty.

By letter dated May 27, 1998, the Office of Workers' Compensation Programs requested that appellant submit additional evidence in support of her claim. Appellant submitted a statement, noting that she was leaving her office building and fell. She noted that an ambulance was called and she was transported to a local hospital.

In a July 30, 1998 decision, the Office denied appellant's claim, finding that she had not established that she sustained an injury while in the performance of duty. It noted that her injury occurred outside the annex building in which her office was located as she was running towards her car. The Office found that appellant was off the work premises and engaged in an activity not incidental to her employment.

By letter dated August 25, 1998, appellant requested review of the written record.

By decision dated October 23, 1998, the Office hearing representative set aside the July 30, 1998 decision and remanded the case for further development on whether appellant's injury was sustained in the performance of duty. The hearing representative directed the Office to ascertain the boundaries of where the injury occurred and obtain a statement from appellant's supervisor confirming the boundaries of the industrial premises.

In a March 31, 1999 memorandum, the Office noted contacting Deanna Ferguson, the workers' compensation specialist at the employing establishment. Ms. Ferguson indicated that, at the time of the injury, appellant was exiting from the annex building. She stated that the

employing establishment was responsible for the upkeep and maintenance of the area where the injury occurred. Ms. Ferguson noted that appellant had received a telephone call from her mother informing her that her father had sustained a stroke. Appellant left the building to go to her car and retrieve her address book to call her brother and sister. Ms. Ferguson stated that appellant was injured and did not return to work until April 6, 1998.

The Office also contacted appellant on March 31, 1999. Appellant stated that she worked on a flexitime schedule and had reported to work at 8:50 a.m. She received a telephone call from her mother at 11:00 a.m., notifying her of her father's stroke. Appellant advised her mother that she would contact her brother and sister. She proceeded to her car to retrieve her address book and, while on route, slipped and fell. Appellant noted that she had not signed out to go home and planned on returning to her desk to make the telephone calls.

In an April 16, 1999 decision, the Office denied appellant's claim, finding that she was not in the performance of duty when the injury occurred.

On May 6, 1999 appellant requested an oral hearing, which was held on November 4, 1999. She appeared and testified that, on March 2, 1998, while on a lunch break at her desk, she received a telephone call from her mother indicating that her father had a stroke. Appellant left the building and tripped over a piece of uneven sidewalk and fell face down, sustaining lacerations to her head, broken glasses, a black eye, skinned elbow, bruised left ribs and knee. Appellant stated that she was headed towards her car, which was parked in the parking lot owned and maintained by the employing establishment.

In a January 19, 2000 decision, the Office hearing representative denied benefits on the grounds that appellant failed to establish that her injury was sustained while in the performance of duty.

The Board finds that appellant's injury of March 2, 1998 was not sustained while in the performance of duty.

Congress, in providing for 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. It is not sufficient under general principles of workers' compensation law to predicate liability merely upon the existence of an employee-employer relationship.<sup>1</sup> Congress has provided for the payment of compensation for disability or death resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."<sup>2</sup> "In the course of employment," deals with the work setting, the locale, and the time of injury, whereas "arising out of the employment" encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury.<sup>3</sup> In the compensation field, it is generally held that an

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<sup>1</sup> *George A. Fenske*, 11 ECAB 471 (1960).

<sup>2</sup> *Timothy K. Burns*, 44 ECAB 291 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Christine Lawrence*, 36 ECAB 422 (1985).

<sup>3</sup> *Larry J. Thomas*, 44 ECAB 291 (1992).

injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment, or the risk is incidental to the employment or to the conditions under which the employment is performed.<sup>4</sup>

Appellant testified that she was on a lunch break in her office when she got a telephone call informing her that her father had a stroke. Appellant left the office building to retrieve her address book from her car. Appellant contends that she was on federal property at the time of the injury, as she fell on an uneven sidewalk a few feet outside the exit door to her building. A review of the map and diagram concerning this location support her contention. Moreover, Ms. Ferguson acknowledged that the employing establishment was responsible for the maintenance and upkeep of the area in which the injury occurred. Therefore, the Board notes that appellant's injury was sustained while on the premises of the employing establishment.<sup>5</sup>

However, the mere fact that the employee was on the premises at the time of injury is not sufficient to establish entitlement to compensation benefits. It must also be established that appellant was engaged in activities which may be described as incidental to her employment, *i.e.*, that she was engaged in activities which fulfilled her employment duties or responsibilities or were incidental thereto. In *Mary Beth Smith*,<sup>6</sup> the employee left her office building to attend to her injured child who was located in another building at the employing establishment's day care center. When she entered this building, the employee stumbled over the carpet and sustained a fracture of her left foot. The Board stated:

“Although appellant obtained permission from her supervisor to leave the building in which her work station was located to attend to her injured child, her injury cannot be characterized as a ‘special mission’ authorized by the employer to further the business or mission of the agency. Upon her departure from her workstation, appellant was no longer engaged in her master's business, but in a personal mission which was not related to the fulfillment of her employment duties or responsibilities. Whether a particular case is or is not within the scope of the Federal Employees' Compensation Act depends upon the general test of whether the particular risk may be said to be reasonably incidental to the employment, having in mind all relevant circumstances and the conditions under which the work is required to be performed.”<sup>7</sup>

Similarly, appellant was not engaged in the duties of her work with the employing establishment or in activities that can be characterized as reasonably incidental to her employment. Rather, after notice of her father's stroke, appellant departed from her workstation

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<sup>4</sup> *Mary Beth Smith*, 47 ECAB 747 (1996).

<sup>5</sup> Under the proximity rule, the Board has noted that the industrial premises may be constructively extended to hazardous conditions that are proximately located to the premises and may therefore be considered as hazards of the employing establishment. See *Diane Bensmiller*, 48 ECAB 675 (1997).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Id.* at 749.

and engaged in a personal mission to retrieve her address book from her car. Appellant's errand was not related to her employer's business or reasonably incidental to her employment. Her action was a personal mission unrelated to her employment. Nor can her actions be likened to incidental acts, such as using a toilet facility, drinking coffee or similar beverages, or eating a snack during a recognized break in the daily work hours, which are generally recognized as personal ministrations that do not take the employee out of the course of her employment.<sup>8</sup> The departure from her workstation to retrieve her address book is not considered an activity necessary for personal comfort or ministration, and therefore is not incidental to appellant's employment.

The Board finds that appellant's injury on March 2, 1998 was not sustained while in the performance of duty.

The January 19, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
October 3, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>8</sup> *Valerie C. Boward*, 50 ECAB \_\_\_\_ Docket No. 96-1971, issued October 28, 1998).