U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN A. PICARD and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, CANAVERAL NATIONAL SEASHORE, Titusville, FL

Docket No. 00-2043; Submitted on the Record;
Issued October 24, 2001

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an injury while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits.

On December 22, 1999 appellant, then a 52-year-old park ranger/interpreter, filed an occupational disease claim alleging that she developed sciatica as a result of having to sit for long periods of time while attending a class after work. She stated that after the course was completed she tried to modify her work schedule but her request was denied. According to appellant, the employing establishment assigned her another project that required her to spend more time sitting at her computer and, therefore, increased her back pain.

The employing establishment controverted appellant's claim and her supervisor submitted the following statement:

> "The employee took a computer course of her own volition, which required considerable sitting. Since she was not 'required' to take this computer course, she could have quit at any time. The government did pay for the course, as it was a mutual benefit, however, the employee requested course and it is not a requirement for her job.
>
> "Additionally, the employee is *not* required to sit for long periods at work. Her position as a interpreter is in the field with visitors. On occasions she does sit to use a computer for short amounts of time to produce a one page monthly schedule and 3 to 4 work titles for pictures on bulletin boards." (Emphasis in the original.)

On a prescription form dated December 16, 1999, Dr. Michael M. Dietch advised that appellant's work schedule should be modified because prolonged sitting was aggravating appellant's sciatica.

In a December 6, 1999 memorandum, appellant stated that she wanted to take an Adobe training course for improvement of job performance. Appellant stated: "This training is to help me produce a better newspaper."

In a letter dated January 13, 2000, the Office notified appellant of the factual and medical evidence required to establish her claim.

In a statement received by the Office on February 22, 2000, appellant stated:

> "I had the critical element of coordinating and publishing the newspaper. My volunteer did it in PageMaker last year. I bought a new home computer and got the program in case something happened to her I could still make my deadline. I could not work the final changes. I identified to my supervisor it was not right to have a critical element that I had no control over and if we were going to continue with the newspaper I would need to get the program at work and the training to do it."

Appellant indicated that her supervisor refused to let her take a computer course in Adobe PageMaker during regular work hours and insisted that she take the course on her own time, but the cost of the course would be paid by the employing establishment. She stated that when she began to have back problems during the course, she was told that if she quit the course, the employing establishment would consider whether she was required to reimburse the government for the cost of the course.

In a decision dated February 22, 2000, the Office denied compensation on the grounds that appellant failed to establish that the claimed factors met the "performance of duty" requirement.[1]

On March 1, 2000 appellant requested reconsideration.

In a decision dated March 8, 2000, the Office denied modification of the Office's February 22, 2000 decision.

The Board finds that this case is not in posture for a decision.

[1] On February 22, 2000 the Office received additional evidence from appellant consisting of several memos requesting permission to take the Adobe training course and a copy of appellant's performance evaluation. The "Employee Performance Plan and Results Report" describes appellant's job as requiring her to produce a publish an annual park newspaper by compiling and editing submissions from edits submissions from other divisions and then organizing the material into the finished product.

The Federal Employees' Compensation Act[2] provides 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 "sustained while in the performance of his 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." In the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place within the time or period of employment; at the place where the employee may reasonably be expected to be in connection with his employment; and while he or she is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto. The Board has recognized that a factor considered in applying the "in the course of employment" standard is whether an injury occurred at a time when the employee may reasonably be said to be engaged in the master's business, even indirectly, or where his activities are an inherent or common part of the conditions of his employment.

The Board notes that the bulk of appellant's evidence was date-stamped as received by the Office on February 22, 2000, the date it issued its final merit decision. The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. Thus, the Office must review all evidence submitted by appellant and received by the Office before issuance of its final decision.[3] Decisions of the Board are final as to the subject matter appealed. Therefore, all relevant evidence that was properly submitted to the Office before the time of the issuance of its final decision must be addressed by the Office.[4]

[2] 5 U.S.C. §§ 8101-8193.

[3] *See William A. Couch*, 41 ECAB 548 (1990).

[4] *Id*.

The March 8, 2000 and February 22, 1999 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
October 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member