U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT A. PSZCZOLKOWSKI and U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY

Docket No. 01-1645; Submitted on the Record;
Issued April 11, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on March 6, 1999.

On March 6, 1999 appellant, then a 55-year-old mailhandler filed a claim alleging that, on that date, he was injured in the performance of duty when he slipped on ice in the employing establishment parking lot injuring his right ankle. The injury occurred at 7:30 a.m. Appellant's regular duty hours were 7:15 a.m. to 3:45 p.m. His supervisor completed the claim form, indicating that appellant was not injured while in the performance of duty.

By letter dated March 12, 1999, the Office of Workers' Compensation Programs advised appellant that the initial evidence of file was insufficient to establish his claim and requested that he submit additional evidence.

Appellant submitted emergency room treatment notes dated March 6, 1999 from Dr. Graham Huckell, a Board-certified orthopedic surgeon. The emergency room notes included a history of appellant's injury and treatment for his right ankle. The treatment notes from Dr. Huckell dated through April 16, 1999 indicated that appellant sustained a trimalleolar fracture dislocation of his right ankle. Dr. Huckell performed an open reduction of the trimalleolar fracture of the right ankle. He noted that appellant was recovering from the injury but remained temporarily totally disabled.

The employing establishment submitted a witness statement from the supervisor dated March 10, 1999; an employment establishment letter of contravention; and two telephone conference calls with appellant dated May 17 and May 19, 1999. The witness statement indicated that appellant reported for work and attended a goal and safety discussion. The witness noted that appellant left the building to retrieve personal mail from his car and fell while in the parking lot. The employment establishment letter of contravention indicated that appellant began his tour of duty on March 6, 1999 at 7:15 a.m. Appellant attended a goal and safety discussion with his supervisor and thereafter left the building to retrieve personal mail from his

car when he fell on ice. The employing establishment noted that appellant was not on an authorized break at the time of his injury nor was he granted permission to exit the building. The telephonic conference with appellant and the claims examiner on May 17, 1999 documented appellant's version of the incident. Appellant stated that, on March 6, 1999, after he had been working 15 to 20 minutes, he went out to his car which was parked in the employing establishment parking lot to retrieve his personal mail from the visor. He noted that he slipped on the snow covered ice while going to his car. Appellant indicated that he did not notify anyone where he was going and did not ask for permission. Additionally, appellant did not remember receiving training or notification from the employing establishment regarding leaving the building during working hours without official permission. The conference call on May 19, 1999 was between the claims examiner and the human resources specialist. The human resources specialist noted that there were regulations posted at the work site providing guidelines for those employees who leave the employing establishment building without permission. She indicated that the regulations provide that the employees supervisor's permission must be obtained before leaving the work assignment for any reason except the lunch period. The human resources specialist further noted that there were six instances where other employees received letters of warning when they left their work assignment areas without permission.

By decision dated July 16, 1999, the Office denied appellant's claim, finding that he was not in the performance of duty at the time his injury occurred.

By letter date-stamped August 24, 1999, appellant requested an oral hearing before a hearing representative.

In a decision dated September 20, 1999, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

In a letter dated November 9, 1999, appellant requested reconsideration of the decision dated July 16, 1999 and submitted treatment notes from Dr. Huckell dated March 26, 1999 to January 10, 2000; and a narrative statement. Dr. Huckell noted that appellant underwent a diastasis screw removal and could return to work on unrestricted duty on September 13, 1999. Appellant's narrative statement indicated that he was never disciplined for leaving the place of employment on March 6, 1999 to retrieve his mail. Additionally, he noted that the employing establishment had smoking areas which the employees would leave the building to utilize and this activity was done without a supervisor's permission.

By decision dated September 8, 2000, the Office denied appellant's claim, finding that he was not in the performance of duty at the time of his injury.

In a letter dated February 15, 2001, appellant requested reconsideration of the Office's decision. Appellant indicated that he was not disciplined for retrieving his mail from his car and noted that he was acting within the performance of duty.

In a decision dated May 21, 2001, the Office denied appellant's claim, finding that he was not in the performance of duty at the time of his injury.

The Board finds that appellant's injury of March 6, 1999 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.[1] 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."[2] "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.[3] In the compensation field, it is generally held that an 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.[4]

Appellant indicated that he left the office building to retrieve his personal mail from his vehicle. At the time of his fall, appellant was not on an authorized break, rather he left his work area on a personal mission. He contends that he was on federal property at the time of the injury, as he fell on ice outside the exit door to his building. Moreover, the employing establishment acknowledged that the employing establishment was responsible for the maintenance and upkeep of the area in which the injury occurred. The Board notes that appellant's injury was sustained while on the premises of the employing establishment.

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 his or her employment, *i.e.*, that he or she was engaged in activities which fulfilled his or her employment duties or responsibilities or were incidental thereto. In *Mary Beth Smith*,[5] the employee left her

[1] *George A. Fenske*, 11 ECAB 471 (1960).

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

[3] *Larry J. Thomas*, 44 ECAB 291 (1992).

[4] *Mary Beth Smith*, 47 ECAB 747 (1996).

[5] *Id.*

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 other 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 workstation 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 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."[6]

Similarly, appellant herein was not engaged in the duties of his work with the employing establishment or in activities that can be characterized as reasonably incidental to his employment. Rather, after a morning discussion, appellant departed from his workstation and engaged in a personal mission to retrieve articles of mail from his car. Appellant's errand was not related to his employer's business or reasonably incidental to his employment. His action was a personal mission unrelated to his employment. Appellant's actions cannot 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.[7] The departure from his workstation to retrieve his personal mail is not considered an activity necessary for personal comfort or ministration and therefore is not incidental to appellant's employment.[8]

The Board finds that appellant's injury on March 6, 1999 was not sustained while in the performance of duty.

[6] *Id.* at 749.

[7] *Valerie C. Boward*, 50 ECAB ____ Docket No. 96-1971, issued October 28, 1998).

[8] *Barbara D. Heavener*, 53 ECAB ___ Docket No. 00-1453, issued October 3, 2001).

The decisions of the Office of Workers' Compensation Programs dated May 21, 2001 and September 8, 2000 are affirmed.

Dated, Washington, DC
April 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member