U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA G. JOHNSON and DEPARTMENT OF THE INTERIOR, OFFICE OF SURFACE MINING, Knoxville, TN

Docket No. 02-552; Submitted on the Record; Issued August 5, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has established that she sustained injuries in the performance of duty on June 17, 2000.

On July 1, 2000 appellant, then a 56-year-old assessment conference officer, filed a claim for injuries to her right wrist which she allegedly sustained on June 17, 2000 when she tripped over a chair and fell while on the employing establishment premises for the purpose of removing some plants from her office. Appellant stopped work on June 19, 2000 and returned to work on July 11, 2000. The employing establishment controverted the claim, stating that the incident occurred on a Saturday, a nonworkday, that appellant had not been instructed by her supervisor to report to work on that day and that management had not requested that she remove any property from the building, personal or otherwise.

In response to an Office of Workers' Compensation Programs inquiry, appellant stated that several years earlier, while under a former supervisor, she brought a number of plants to her office after an air quality study revealed a decreased level of oxygen in her workplace. Appellant explained that, over the years, the plants became very overgrown and that on several occasions, her current supervisor, Emma J. Callahan, made remarks regarding the size of the plants and the need to do something about them to improve her office appearance. Appellant stated that, while she was not specifically instructed by her supervisor to remove the plants, such action was repeatedly implied. For example, during an April 5, 2000 annual walk-through safety inspection, conducted by Ms. Callahan, Denny Griswold and herself, Ms. Callahan remarked that appellant's office looked good except for the plants, which looked like a jungle, and that appellant really needed to do something about them, and Mr. Griswold stated that he would cut them down or remove them if appellant did not. Appellant stated that on June 16, 2000, the day before her injury, she advised Ms. Callahan that she might come in over the weekend and remove her plants, and that her supervisor simply told her to be careful and have a good weekend, or words to that effect, and did not object to appellant's plan.

By decision dated September 21, 2000, the Office rejected appellant's claim on the grounds that appellant had not submitted any medical evidence to support that she sustained an injury as alleged, and that even if she had, as appellant was not working at the time of the accident, but only removing plants from her office, she was not in the performance of duty.

On August 31, 2001 appellant requested reconsideration of the Office's decision. In support of her request, appellant submitted a personal affidavit reiterating her prior statements, as well as medical evidence documenting appellant's June 17, 2000 fractured wrist and subsequent treatment. In addition, appellant submitted her handwritten notes documenting the comments by the safety team, of which she herself was a member, taken during the April 5, 2000 safety inspection walk-through. The notes contain comments about at least 11 separate offices, and next to the initials indicating her own office, appellant wrote: "[Ms. Callahan] looks good except plants -- need to do something" and "DG [Denny Griswold] looks like jungle -- he will remove trees one of these days if I don't." In addition, appellant submitted several pages from her personal daytimer containing comments about her plants and the need to remove them.

In response, appellant's supervisor, Ms. Callahan, submitted a narrative statement controverting appellant's claim. Ms. Callahan stated, in pertinent part, that she never asked appellant or any other employee to remove their personal plants from the office, made no comments about appellant's plants during the April 5, 2000 safety inspection, and that the April 5, 2000 Safety Inspection Report contains no mention of any plants. In addition, Ms. Callahan stated that she did not remember a June 16, 2000 conversation with appellant regarding her coming into the office over the weekend to remove her plants and did not know of appellant's plans to do so. Finally, Ms. Callahan emphasized that she never told appellant directly, or impliedly, that she should remove her plants from the office, and in fact, thought they were beautiful.

In a decision dated November 19, 2001, the Office found that appellant had established that she sustained an injury on June 17, 2000, but further found the evidence insufficient to establish that the injury was sustained in the performance of duty, and, therefore, insufficient to modify the prior denial.

The Board finds that appellant has not established that her injuries on June 17, 2000 were sustained 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 her employment; liability does not attach merely upon the existence of an employee/employer relationship.[1] 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.[2] The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found

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[1] *Margaret Gonzalez*, 41 ECAB 748 (199); *Christine Lawrence*, 36 ECAB 422 (1985).

[2] *See* 5 U.S.C. § 8102(a).

prerequisite in workers' compensation law of "arising out of and in the course of employment."[3] "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.[4] In addressing the issue, the Board has stated:

> "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 master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[5]

The injury in this case occurred on the premises of the employing establishment.[6] However, this factor alone is not sufficient to establish entitlement to benefits for compensability, as the concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury.[7] In order for an injury to be considered as "arising out of the employment," the facts of the case must show some "substantial employer benefit or requirement" which gave rise to the injury.[8] It is incumbent upon appellant to establish that it arose out of her employment. In other words, some contributing or causal employment factor must be established.[9]

Under the circumstances of this case, there was no requirement that appellant come to the employment premises on a day she was not scheduled to work to remove plants from her office. Appellant stated that she was never instructed to remove her plants, but rather that she felt that her supervisor had implied such through her comments. In addition, appellant's supervisor has refuted appellant's assertions, stating that she never stated or implied that appellant should remove her plants, and appellant has submitted no independent corroborative evidence in support of her claim, only her own notes from her daytimer and the inspection walk-through. Appellant was not engaged in her master's business, but on a personal mission that was not related to the fulfillment of her employment duties or responsibilities. Whether a particular case is or is not

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[3] *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 42 ECAB 721 (1990).

[4] *Timothy K. Burns*, *supra* note 3.

[5] *Id*.

[6] As to the phrase "in the course of employment," the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or coming from work, before or after working hours, or at lunch time or other such breaks are compensable; *see Timothy K. Burns*, *supra* note 3.

[7] *Narbik A. Karamian*, 40 ECAB 617 (1989).

[8] *Catherine Callen,* 47 ECAB 192 (1995).

[9] *See Margaret Gonzalez, supra* note 1.

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. The Board finds under the circumstances of this case, that appellant was not engaged "in the course of [her] employment" at the time of her injury on June 17, 2000 and, therefore, her right wrist injury was not sustained while in the performance of duty. Furthermore, appellant has not shown that returning to the employment premises on her day off provided any substantial employer benefit.[10] Accordingly, the Board concludes that appellant was not fulfilling the duties of her employment at the time of her injury and was not in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated November 19, 2001 is hereby affirmed.

Dated, Washington, DC
August 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[10] *See Mark C. Holst*, 39 ECAB 496 (1988).