U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA R. PERRY and U.S. POSTAL SERVICE
POST OFFICE, Detroit, MI

Docket No. 02-1830; Submitted on the Record;
Issued December 5, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

On April 9, 2002 appellant, then a 46-year-old rural carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on June 28, 2000 she sustained an employment-related injury when a woman ran a stop sign and hit her car. Appellant indicated that the incident occurred almost immediately after she left work. She alleged a cervical strain injury to the neck and shoulder blades and a headache in the base of her brain due to the car accident.[1] The employing establishment controverted the claim and indicated that appellant was not on the clock at the time of her incident.

In an April 19, 2002 letter, the employing establishment controverted the claim and indicated that appellant was working in a limited-duty assignment inside the main building and she was not contracted to provide a vehicle for work. The employing establishment indicated that the accident occurred on appellant's way home from work. The employing establishment also stated that appellant was not entitled to an equipment maintenance allowance while she was working in a limited-duty status. In addition, the employing establishment also stated that a police report was never submitted to support the actual date, time and location of the claimed motor vehicle accident. Further, it stated that there was no medical evidence submitted to support a medical condition resulting from the motor vehicle accident.

In an April 16, 2002 statement, Mike Schlump, the supervisor, explained that the Form CA-l was never submitted to injury compensation because the accident was not work related.

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[1] Appellant stated that she attempted to file the CA-l form on two occasions prior to April 9, 2002 without any success. She also stated that she tried to file the form on January 24, 2001 but Joe Fedea a formal postmaster advised her that she could not file because she was not performing rural carrier duties.

In an April 17, 2002 statement, Mr. Fedea, a former postmaster, indicated that appellant was never denied a Form CA-l and never submitted the form to her supervisors. He stated that appellant was advised that a Form CA-l was a form to be completed when one was injured while in the performance of duty.

In a decision dated May 23, 2002, the Office of Workers' Compensation Programs denied appellant's claim, finding that she failed to establish an injury in the performance of duty.

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 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.[3] The term" while in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation of "arising out of and in the course of employment." The phrase "in the course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur:

> "(1) [a]t a time when the employee may be reasonably said to be engaged in the master's business;
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> "(2) [a]t a place where she may reasonably be expected to be in connection with the employment; and
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> "(3) [w]hile she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto."

This alone is not sufficient to establish entitlement to benefits for compensability. 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 that the employment caused the injury. 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 is derived or an employment requirement gave rise to the injury.[4]

Under the Act an injury sustained by an employee having fixed hours and place of work, while going to or coming from work, is generally not compensable because it does not occur in the performance of duty but out of the ordinary nonemployment hazards of the journey itself, which are shared by all travelers. This is in accord with the weight of authority under workers'

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

[4] *Charles Crawford*, 40 ECAB 474 (1989).

compensation statutes that such injuries do not occur in the course of employment.[5] This rule also applies where an employee is leaving his permanent duty station after work and is injured in an area immediately adjacent to a federal building where she worked but which is not owned or controlled by the federal government.[6]

Under the facts of this case, the Office properly determined that appellant's June 28, 2000 injury was not sustained in the performance of her duties. The evidence establishes that at the time of the accident appellant had left the employing establishment, gotten into her car and was hit by a woman who ran a stop sign, after leaving the employing establishment, in an area neither owned nor controlled by the federal government. Her status at that time was that of a "fixed premises" employee with fixed hours of work coming from work. Her duties on the date of injury did not require her to drive a motor vehicle. Appellant was, therefore, subject to the "going and coming" rule generally applicable to such employees and her injury was not compensable.

The May 23, 2002 decision of the Office of Workers' Compensation is hereby affirmed.

Dated, Washington, DC
December 5, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[5] Larson, *The Law of Workers' Compensation* § 13.00 (2002); *Nancy S. Hardin*, 38 ECAB 285 (1986); *John E. Phifer*, 8 ECAB 77 (1955).

[6] *Sam Bock*, 32 ECAB 1636 (1981).