

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TRINA BORNEJKO and DEPARTMENT OF THE AIR FORCE,  
WRIGHT-PATTERSON AIR FORCE BASE, OH

*Docket No. 01-1118; Submitted on the Record;  
Issued February 27, 2002*

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DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty.

On March 1, 2000 appellant, then a 40-year-old engineer, filed a notice of traumatic injury alleging that on February 14, 2000 she slipped on ice and injured her ankle on the way to the airport for a temporary duty assignment. Appellant indicated to her physician, Dr. James E. Foster, on February 14, 2000, that the injury occurred at her son's school. Appellant had stopped to drop off her son at his school on her way to the airport. She stated that, after she let her son out of her van, she slipped on some ice on the curb and injured her left ankle. She and her husband, who was driving the van, drove back to her home where she telephoned her employing establishment to inform them of the accident and that she would not be going on the temporary duty assignment. Appellant also stated in a March 23, 2000 conference call that she hurt her ankle when she and her husband stopped to let her son off at his school.

The Office of Workers' Compensation Programs denied appellant's claim on April 11, 2000. Appellant requested an oral hearing, which was held on October 25, 2000. By decision dated January 17, 2001, the hearing representative affirmed the Office's decision finding that appellant had taken herself out of the performance of duty.

The Board finds that appellant did not sustain an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In the instant case, appellant has not established that she was injured while in the performance of duty.

The Act<sup>4</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.<sup>5</sup> 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.”<sup>6</sup> “Arising in the course of employment” relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his or her master’s business, at a place where he or she may reasonably be expected to be in connection with her employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish the concurrent requirement of an injury “arising out of the employment.” “Arising out of employment” requires that a factor of employment caused the injury.<sup>7</sup>

The Board has recognized the rule that the Act covers an employee 24 hours a day when he or she is on travel status, a temporary duty assignment, or a special mission and engaged in activities essential or reasonably incidental to such duties. However, when the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during these deviations is not compensable.<sup>8</sup>

At the time of her February 14, 2000 injury, appellant was on travel status, on her way to the airport, away from her regular place of employment. While on travel status she is covered 24

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Id.* at § 8102(a).

<sup>6</sup> This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>7</sup> *Eugene G. Chin*, 39 ECAB 598 (1988); see *Charles Crawford*, 40 ECAB 474 (1989) (the phrase “arising out of and in the course of employment” encompasses not only the concept that the injury occurred in the work setting, but also the causal concept that the employment caused the injury); see also *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

<sup>8</sup> *Lawrence J. Kolodzi*, 44 ECAB 818 (1993); *Kenneth R. McCabe*, 39 ECAB 1108 (1988); *Richard Michael Landry*, 39 ECAB 232 (1987).

hours a day with respect to any injury that results from activities incidental to such duties. In this case, however, appellant acknowledged to her physician on February 14, 2000 that she hurt her ankle while dropping her son off at his school. She also stated this same fact in the March 23, 2000 conference call. Taking her son to school is personal in nature and does not constitute a normal activity reasonably incidental to her employment or travel assignment. As a purely personal pursuit, such activity constitutes a deviation from the performance of duty of an individual on travel status or on a temporary duty assignment, such that the 24 hour-a-day coverage under the Act does not apply.

Consequently, appellant's ankle injury on February 14, 2000 was not reasonably incidental to her federal employment.

Accordingly, the January 17, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
February 27, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member