

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONDA LEE and U.S. POSTAL SERVICE,
POST OFFICE, West Palm Beach, FL

*Docket No. 01-1183; Submitted on the Record;
Issued January 22, 2002*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

On January 8, 2001 appellant, then a 37-year-old postal clerk, filed a notice of traumatic injury alleging that she tripped over a parking block and hurt her right elbow and arm. She listed the address of the place where the injury occurred to be the same address as her duty station.

In a January 23, 2001 letter, the Office of Workers' Compensation Programs requested the employing establishment to provide additional information, including whether or not appellant was on premises that were owned and operated by the agency at the time of the alleged work injury.

In a second letter dated January 23, 2001, the Office informed appellant that she needed to submit rationalized medical evidence to support her claim for compensation.

Appellant submitted copies of hospital records from Good Samaritan Hospital dated January 8, 2001, indicating that she was treated for a nondisplaced fracture of the radial head of her right elbow.

In a decision dated March 12, 2001, the Office denied the claim for compensation on the grounds that appellant failed to establish an injury in the performance of duty. Specifically, the Office noted that the evidence was insufficient to establish that appellant was injured "in the course of employment" since it was unknown whether or not the parking facility where appellant was injured was owned or controlled by the employing establishment.

The Board finds that this case is not in posture for a decision.¹

¹ The Board does not have jurisdiction to review evidence submitted by appellant on appeal. The Board may only review evidence that was before the Office at the time of the Office's most recent decision. *See* 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act 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 for which compensation is claimed are causally related to the employment injury. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

The Act 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 duty" is regarded as the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated: "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonable be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."³

In this case, the Office requested information from the employing establishment to ascertain whether the parking lot where appellant was injured was in its control. The employing establishment, however, did not respond to the Office's inquiry. Appellant should not be penalized for the failure of the Office to develop the evidence. Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.⁴

The Board finds that the Office must make a determination on where the injury occurred and whether that location was considered to be on the employing establishment premises. The Office may not simply conclude, in light of the employing establishment's failure to respond, that appellant has not met her burden. The Office should determine whether the parking facility was owned or controlled by the employing establishment, rather than simply finding that "it is unknown." The Office should then determine whether the injury was sustained in the performance of duty.

² *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

³ *Cora L. Falcon*, 43 ECAB 915 (1992); *Clarence Williams*, 43 ECAB 725 (1992).

⁴ *Mary A. Geary*, 43 ECAB 300 (1991); *Debbie J. Hobbs*, 43 ECAB 135 (1991).

The March 12, 2001 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
January 22, 2002

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member