

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of COLLEEN A. MURPHY and DEPARTMENT OF COMMERCE,  
DECENNIAL CENSUS, Washington, DC

*Docket No. 01-1319; Submitted on the Record;  
Issued November 6, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant was in the performance of duty on May 20, 2000 when she sustained an injury in a motor vehicle accident.

On May 20, 2000 appellant, then a 28-year-old crew leader assistant for the decennial census, indicated that she sustained multiple facial lacerations when she was involved in a motor vehicle accident at work. She indicated that she left 7300 Brompton Road in Houston, Texas at 7:15 p.m. and was on her way to perform enumeration duties at 9400 South Highway 6. Appellant noted that at 7:25 p.m. she was involved in a motor vehicle accident at 14100 U.S. Route 59.<sup>1</sup> By decision dated August 24, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that her May 20, 2000 injury did not occur in the performance of duty because it did not arise out of and in the course of employment.<sup>2</sup> By decision dated and finalized February 2, 2001, an Office hearing representative affirmed the Office's August 24, 2000 decision.<sup>3</sup>

The Board finds that the case is not in posture for decision regarding whether appellant was in the performance of duty on May 20, 2000 when she sustained an injury in a motor vehicle accident.

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 employment. Liability does not attach merely upon the existence of an employer-employee relationship.<sup>4</sup> Instead, Congress

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<sup>1</sup> Appellant indicated that she had been performing enumeration duties at 14100 U.S. Route 59 earlier in the day and then resumed her duties there after taking an authorized break.

<sup>2</sup> The Office found that appellant was not on a "direct route" to her home or job at the time of the injury.

<sup>3</sup> The Office hearing representative found that appellant was not on a direct route from "her point of origin to her place of work" when she was injured.

<sup>4</sup> *Maribel Dayap*, 48 ECAB 248, 249 (1996).

provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The term “in the performance of duty” has been interpreted to be the equivalent of the commonly found prerequisite in workers’ compensation law “arising out of and in the course of employment.”<sup>5</sup> 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 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.”<sup>6</sup>

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee’s work assignment or whether it represents such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.<sup>7</sup> The standard to be used in determining whether an employee has deviated is that, in addition to a person taking a “somewhat roundabout route” or not taking the most direct route between the place of origin and the point of destination, it must be shown that the deviation was “aimed at reaching some specific personal objective.”<sup>8</sup>

In the present case, the record contains evidence which shows that appellant was involved in a vehicular accident which occurred at 14100 U.S. Route 59 at 7:25 p.m. on May 20, 2000. The record contains a form signed by appellant’s supervisor which suggests that at 7:15 p.m. on May 20, 2000 appellant was on-duty and left 9400 South Highway 6 in order to perform authorized enumeration duties at 7300 Brompton Road.<sup>9</sup> The employing establishment alleged that appellant deviated from her employment activities because the accident occurred at some distance from the direct route between 9400 South Highway 6 and 7300 Brompton Road. In a statement dated June 28, 2000, a supervisor noted that an internet mapping site showed that appellant’s accident occurred 7.7 miles south of the direct route between 9400 South Highway 6 and 7300 Brompton Road. In a statement dated June 19, 2000, another supervisor noted that the accident occurred more than 10 miles from “the area she should have been working in.”

The employing establishment has not denied that appellant was on the clock and had left 9400 South Highway 6 at 7:15 p.m. to keep an appointment to perform enumerating duties at

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<sup>5</sup> *Christine Lawrence*, 36 ECAB 422, 423-24 (1985).

<sup>6</sup> *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

<sup>7</sup> *Thomas E. Keplinger*, 46 ECAB 699, 706 (1995).

<sup>8</sup> *Dannie G. Frezzell*, 40 ECAB 1291, 1294 (1989). The Board has also stated that a deviation from an employment trip for personal reasons, that is, one aimed at reaching some specific personal objective, takes an employee out of the course of employment until he returns to the route of the business trip unless the deviation is so insubstantial that it may be disregarded. *Juan Antonio Bonilla*, 37 ECAB 598, 600-01 (1986).

<sup>9</sup> The supervisor also indicated in a statement that appellant told him when she left a meeting on the morning of May 20, 2000 that she would be performing enumeration duties at Brompton Road.

7300 Brompton Road.<sup>10</sup> The employing establishment has claimed that appellant had deviated from the most direct route between the two locations when the accident occurred. However, the record remains unclear regarding the precise location of the accident in relation to the direct route between 9400 South Highway 6 and 7300 Brompton Road. For example, the record does not contain a copy of a map which clearly details the location of the route between 9400 South Highway 6 and 7300 Brompton Road in relation to the site of the accident at 14100 U.S. Route 59.<sup>11</sup>

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>12</sup> Therefore, the case should be remanded for further development of the evidence regarding whether appellant was in the performance of duty on May 20, 2000 when she sustained an injury in a motor vehicle accident. As part of this development, the Office should attempt to obtain evidence which provides a clearer picture of the course of the route appellant traveled on May 20, 2000 in relation to the site of the accident she sustained. After such further development as it deems necessary, the Office should issue an appropriate decision on this matter.

The September 12, 2001 and August 24, 2002 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
November 6, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> Nor has the employing establishment clearly indicated that appellant was pursuing some personal objective at the time of the accident.

<sup>11</sup> Moreover, it is unclear whether the internet mapping site used by appellant's supervisor accurately plotted the location of appellant's accident in relation to the route between 9400 South Highway 6 and 7300 Brompton Road.

<sup>12</sup> *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).