

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN K. PHILLIPS and U.S. POSTAL SERVICE,
POST OFFICE, Livermore, CA

*Docket No. 01-1991; Submitted on the Record;
Issued October 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on March 27, 2001.

On June 15, 2001 appellant, then a 47-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2001 she sustained injury to her neck, back, right shoulder, right arm, right hip and right leg. Appellant indicated that her vehicle was rear-ended by two trucks while she was stopped on Highway 4. Appellant noted that she was "coming home from vending class in Oakland."¹ On the Form CA-1, appellant's supervisor, Michael Calmes, indicated that appellant was not injured in the performance of duty and stated, "Employee was in a nonpay status. [She] [h]ad completed work for the day and was on her way home." By decision dated July 11, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that appellant did not establish that she sustained an injury in the performance of duty on March 27, 2001.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 27, 2001.

The Board has stated as a general rule that off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.² Due primarily to the myriad factual situations presented by individual cases over the years, certain exceptions to the general rule have developed where the hazards of the travel may fairly be considered a hazard of the employment. The Board has held, "These recognized exceptions are dependent upon the particular facts and related to situations: (1) where the employment requires the

¹ Appellant stopped work on March 27, 2001.

² *Robert F. Hart*, 36 ECAB 186, 191 (1984).

employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firemen; and (4) where the employee uses the highway to do something incidental to her employment with the knowledge and approval of the employer.”³

In the present case, appellant alleged that she sustained an employment-related injury on March 27, 2001 when she was involved in a vehicular accident while returning home from a training class. Appellant, by her own admission, was injured while she was “coming home” from work on March 27, 2001. In statements dated June 20, 2001, Mr. Calmes, a supervisor, stated that the injury occurred on March 27, 2001 when appellant was off-premises and was not involved in postal duties. He indicated that appellant had completed her duties for the day and was off the clock and that the injury occurred when she was on her way home from work.⁴ In a statement dated June 22, 2001, Bernard Gilliam, another supervisor, stated that appellant was injured on March 27, 2001 after she had completed a vending training class and was on her way home. Mr. Gilliam noted that appellant argued she was still on the clock at the time of the injury because the class was dismissed a half hour early. He stated, however, that appellant was off the clock once the class was dismissed. Mr. Gilliam indicated that the accident occurred near appellant’s home and noted that there was no indication that appellant was returning to the employing establishment at the time of the injury.

The above-detailed evidence clearly shows that, at the time of the injury on March 27, 2001, appellant was off duty and was off the premises of the employing establishment. There is no indication that appellant was engaged in any employment duties or any task incidental to her employment.⁵ Rather, appellant was returning home from work and the hazards she encountered were merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.⁶ Appellant has not shown that any of the exceptions apply to the general rule regarding off-premises injuries, which occur while an employee is going to or coming from work. For these reasons, she has not shown that her injury arose out of and in the course of employment. Therefore, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 27, 2001.

³ *Janet Rorrer*, 47 ECAB 764, 768 (1996).

⁴ Mr. Calmes provided a similar statement on the reverse of Form CA-1 completed on June 15, 2001.

⁵ Appellant suggested that she was still on the clock at the time of the injury because the training class she completed was dismissed a half hour early. However, the evidence of record establishes that she was off duty and returning home at the time of the injury.

⁶ The evidence does not support a finding that appellant was returning to the employing establishment at the time of the vehicular accident.

The July 11, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 25, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member