

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATINA D. EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

*Docket No. 02-64; Submitted on the Record;
Issued September 16, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a right wrist injury in the performance of duty on April 17, 2000.

On April 17, 2000 appellant, then a 57-year-old letter carrier, filed a notice of traumatic injury alleging that she injured her right wrist in a motor vehicle accident on that same day. In an accompanying statement, she explained that she was "making a left turn off of Bellingham onto Magnolia Blvd" when "a car came out of no where, driving over the speed limit and struck my vehicle on the left[-]hand side." The record indicates that appellant did not stop work following the accident.

The record includes a medical report from the Saint Joseph Occupational Health Center dated April 24, 2000, indicating that appellant was treated for a right wrist sprain/strain by Dr. John Leung.

The employing establishment submitted a statement arguing that the accident was due to appellant's failure to get clearance prior to entering a main street coming from a residential area. The employing establishment's investigation determined that she failed to yield the right of way. It was also noted that the accident could have been avoided if appellant had followed the prescribed "carriers work flow chart" and had not deviated from her assigned route during an unauthorized lunch break. A map of the accident area and a copy of the work flow chart were provided. The employing establishment submitted documentation that outlined its policy regarding deviation of carriers from their assigned delivery routes. The record includes documentation of appellant's authorized lunch period and authorized lunch location. The employing establishment noted that appellant left for lunch two hours early on the day of the injury in violation of their policies.

By decision of September 12, 2000, the Office of Workers' Compensation Programs denied the claim for compensation as the claimed injury did not occur in the performance of duty, as required under the Federal Employees' Compensation Act.

Appellant requested a hearing by letter dated October 3, 2000.

A hearing was held on March 31, 2001. Appellant appeared at the hearing and testified on her own behalf. She described the motor vehicle accident and confirmed that she was not on her route, but returning from lunch when the collision occurred. Appellant agreed that letter carriers are required to follow specific routes, but indicated that the carriers could deviate from their routes if they receive prior approval. She testified that approval slips (Form 3996) are required on a daily basis, before the carriers leave the station. Appellant maintained that on the day of the injury, she had completed the 3996 Form and it included her lunch location. She further testified that she ate lunch everyday at the same restaurant, Weinerschnitzel, because she was familiar with it, she knew how long it would take to order and eat her lunch there and she did not have to worry about where she would go for lunch. Appellant stated that even when she worked other routes, she always ate lunch at the Weinerschnitzel and her supervisors and coworkers were aware that she did.

Appellant further submitted an excerpt from the Postal Regulations, section 131.311. The excerpt read: [d]o not deviate from your route for meals or other purposes unless authorized by your manager or if local policies concerning handling out of sequence mail permit minor deviations. She also provided copies of the Form 3996 entitled "Carrier -- Auxiliary Control" that she apparently completed on February 23, March 27, 29, 30 and April 3, 4, 10, 11, 12 and 17 and August 22, 2000.

The Board finds that appellant was not in the performance of duty when she was injured on April 17, 2000.

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 or her employment. It is not sufficient under general principles of workers' compensation law to predicate liability merely upon the existence of an employee-employer relationship.¹ Instead, Congress provided for payment of compensation for personal injuries sustained while in the performance of duty.² The Board has interpreted the phrase "sustained while in the performance of duty" as the equivalent of the commonly found prerequisite in workmen's compensation law of "arising out of and in the course of employment."³ "In the course of employment" deals primarily with the work setting, the locale and time of the employee's performance of duty, whereas "arising out of the employment" encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.⁴

The Board has stated that for an injury to arise out of and in the course of employment, it must occur: (1) at time when the employee may reasonably be said to be engaged in her masters'

¹ *George A. Fenske, Jr.*, 11 ECAB 471 (1960).

² *Norman R. Hemby*, 40 ECAB 901 (1989).

³ *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

⁴ *Larry J. Thomas*, 44 ECAB 291 (1992).

business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto; and (4) when it is the result of a risk involved in the employment or the risk is incidental to the employment of the conditions under which the employment is performed.⁵

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 or she returns to the route of the business trip unless the deviation is so insubstantial that it may be disregarded.⁶ The record in this case clearly establishes that at the time of the car accident on April 17, 2000, appellant was at a place that was not on the postal route to which she was assigned. The employing establishment provided a map of appellant's location at the time of the accident and the area that was designated to be during her authorized lunch area. Because appellant deviated from her postal route and was injured, it is necessary to ascertain whether she was still considered to be in the performance of duty.

Although appellant argues that she obtained approval to leave her postal route in order to lunch at a restaurant she was familiar with and where she could obtain fast service, the Board finds no factual support in the record to corroborate that the employing establishment approved of her deviation that date. Specifically, the Form 3996 that was completed by appellant on the day of injury indicates that it was a request for 45 minutes of auxiliary assistance to complete delivery of Pennysaver magazines. The form included the delivery streets and the beginning and ending delivery and travel times. The 45 minutes of auxiliary time were approved. Although the location of appellant's lunch location is also included on the form, the Board does not accept that the supervisor's signature of approval applied to both the auxiliary assistance request and the lunch location, as appellant maintains. The form is specifically entitled "Carrier-Auxiliary Control" and does not appear to be a form typically used to request a change of lunch location such that the employing establishment can be found to have approved appellant's deviation from her approved lunch locations. The form lists the reason for use of auxiliary, the assistance delivery location(s) and the amount and type of mail to be delivered. The Board does not find the form to constitute the approval for deviation from her carrier route for lunch on that date.

Acts of personal comfort, such as eating a snack, using the bathroom or drinking water or other beverages, are generally considered to be the performance of duty.⁷ In this case, however, what removed appellant from the performance of duty was her decision to travel to a restaurant away from the route designated by the employing establishment for her lunch break. Her personal preference for the more distant restaurant made the trip there a personal mission, rather than an activity incidental to her employment and placed her, at the time of the accident, at a place where she would not reasonably be expected to be in connection with her employment. For these reasons, she was not in the performance of duty when she was injured on April 17, 2000.

⁵ *Kathryne Lyons*, 49 ECAB 295 (1998); *Mary Beth Smith*, 47 ECAB 747 (1996).

⁶ *Donna Margretta*, 50 ECAB 220 (1999); *Juan Antonia Bonilla*, 37 ECAB 598 (1986).

⁷ *James E. Chadden, Sr.*, 40 ECAB 312 (1988); *Mary M. Martin*, 34 ECAB 525 (1983).

Accordingly, the decision of the Office of Workers' Compensation Program dated June 20, 2001 is hereby affirmed.

Dated, Washington, DC
September 16, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member