

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH B. BRIGGS and DEPARTMENT OF THE AIR FORCE,
WRIGHT-PATTERSON AIR FORCE BASE, Dayton, OH

*Docket No. 02-2131; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant was injured in the performance of duty on July 5, 2001.

On July 5, 2001 appellant, then a 24-year-old computer specialist, on travel status to attend computer training, was returning to his hotel in Cambridge, Massachusetts, when he stepped over a rail and felt a pop in his right foot. In a July 10, 2001 report, Dr. G.P. Massand stated that a magnetic resonance imaging (MRI) scan of the right leg revealed a rupture of the right Achille's tendon. Appellant underwent surgery on July 7, 2001 for repair of the Achille's tendon. He submitted a copy of his flight information, indicating that he left Dayton, Ohio, for Cambridge, Massachusetts, on June 25, 2001 and was scheduled to return on July 13, 2001.

In a September 18, 2001 letter, the Office of Workers' Compensation Programs requested further information concerning appellant's injury. The Office noted that he indicated that he was injured at 12:15 a.m. on July 5, 2001. The Office asked when and where appellant last performed official duties, noting that July 4, 2001 was a holiday. The Office asked where the rail was in relation to the hotel where appellant was staying. The Office also requested the time at which appellant would have next performed official duties. The Office indicated that it wanted information on where appellant had been and what he was doing when the injury occurred.

In a September 25, 2001 response, appellant indicated that he was on travel status from June 25 to July 13, 2001. He stated that the injury occurred approximately one-tenth to a half mile from the hotel where he was staying. Appellant noted that the rail was not on the hotel property. He indicated that he would have next performed official duties later on July 5, 2001. Appellant stated that he was returning from dinner to the hotel when he stepped over the rail and injured his right Achille's tendon.

In an October 9, 2001 decision, the Office found that appellant was not injured in the performance of duty. The Office stated that appellant was off work on July 4, 2001 and, therefore, was not performing any work duties that day. The Office found that returning at 12:15

a.m. was not a reasonable time to be returning from dinner. The Office concluded that appellant's activity at the time of the injury was not reasonably incidental to his temporary-duty assignment.

In a November 2, 2001 letter, appellant requested a review of the written record. He stated that the main purpose of his travel to Cambridge, Massachusetts, was to attend training. Appellant indicated that on July 4, 2001, he and another trainee left the hotel at 5:00 p.m. to purchase a book on Java programming. He noted that the bookstore was closed. Appellant stated that he had been studying course material in his room all day as he was scheduled to give a presentation on July 13, 2001 with a walk through of his presentation scheduled for July 6, 2001. He commented that he wanted to be prepared for his presentation. Appellant stated that he and the other trainee agreed to meet at 9:00 p.m. in the lobby of the hotel to go to dinner. They then walked to the restaurant. Appellant contended that it was reasonable to have a late dinner after a full day of study while on his training assignment. He stated that while July 4, 2001 was a holiday, it was a workday for him as he spent the day reviewing material and preparing for his presentation, even though he did not have class that day. Appellant indicated that when returning from the restaurant, he stepped over a rail and injured his right Achille's tendon. He noted that he attempted to attend training on the morning of July 5, 2001 but had to seek medical treatment due to his severe pain.

In a May 3, 2002 decision, the Office hearing representative found that, while a late dinner at 9:00 p.m. may be reasonable, an excursion for dinner which lasted over three hours and extended past midnight could not be considered reasonably incidental to the duties of appellant's temporary-duty assignment. He therefore, found that appellant was not in the performance of duty at the time of the July 5, 2001 injury, and affirmed the Office's October 9, 2001 decision.

The Board finds that appellant was injured in the performance of duty.

In his treatise on workers' compensation law, *Larson* explains:

"Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, the injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."¹

The Board has held that the Federal Employees' Compensation Act covers an employee 24 hours a day when he or she is on travel status or on a temporary-duty assignment or special mission and engaged in activities essential or 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, that 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.²

¹ A. Larson, *The Law of Workers' Compensation* § 25.01 (2000).

² *Richard Michael Landry*, 39 ECAB 232 (1987).

In this case, appellant went to dinner and was injured on his return to the hotel. The case is analogous to *William K. O'Connor*.³ In that case, the claimant had dinner and took a short walk after dinner when he was hit by a car while returning to his hotel. The Board held that appellant's trip to the hotel after an evening meal was a normal incident of his special mission. In the present case, appellant similarly was returning to his hotel after an evening meal. There is no showing that spending three hours at dinner was unreasonable or a distinct departure on a personal errand. The Office has not shown that appellant departed on a distinct personal errand such as occurred in *Kathleen M. Fava (John F. Malley)*⁴ where the employee, after dinner, went with coworkers to a sports bar to drink and play pool before they began the trip to return to the hotel. In that case, the trip to the sports bar for drinking and playing pool was not reasonably incidental to the employee's temporary-duty assignment. However, in the present case, there is no evidence that appellant departed from dinner to engage in activities that were not reasonably incidental to the special mission for which he was in a travel status. The focus of the matter of activities that are reasonably incidental to a temporary duty or special mission is on the nature of the activity engaged in, not necessarily the time taken to complete the activity. Absent any evidence that appellant's activity in taking three hours to go from his hotel to eat dinner at a restaurant and return involved some deviation from the purpose of eating dinner, it must be found that appellant's action in this case was reasonably incidental to the duties of temporary-duty assignment. Appellant therefore, was in the performance of duty at the time of this injury. The case will be returned to the Office for further appropriate action.

The decisions of the Office of Workers' Compensation Programs dated May 3, 2002 and October 9, 2001 are hereby reversed.

Dated, Washington, DC
February 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ 4 ECAB 21 (1950).

⁴ 49 ECAB 519 (1998).