

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAYLE E. BOWLING and U.S. POSTAL SERVICE,
POST OFFICE, Norton, OH

*Docket No. 02-2132; Submitted on the Record;
Issued June 27, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on May 23, 2000.

On October 4, 2001 appellant, then a 48-year-old customer services supervisor, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained injuries in a motor vehicle accident on May 23, 2000. Appellant indicated that the time of the accident was 12:43 p.m. In a letter dated October 9, 2001, the employing establishment controverted the claim, stating that appellant was on her lunch break, driving her personal vehicle and was not on the premises.

In an October 31, 2001 statement, an employing establishment supervisor stated that appellant's normal work hours were 9:00 a.m. to 6:00 p.m. at the Norton Post Office (Norton). On May 23, 2000, however, appellant was scheduled for training at the Barberton Post Office (Barberton) from 6:00 a.m. to 10:00 a.m., and then resume working at Norton from 2:00 p.m. to 6:00 p.m. In a letter dated November 2, 2001, an employing establishment compensation specialist noted that on May 23, 2000 appellant was to work a split day and that appellant "would have been eligible for mileage from her home to Barberton." The record contains a map showing the locations of the Norton and Barberton work sites, the site of the accident and appellant's home.

By decision dated November 20, 2001, the Office of Workers' Compensation Programs denied the claim. The Office found that employees injured while in route between work and home are generally not covered, and the instant case did not involve an exception to the general rule.

At a hearing before an Office hearing representative, on April 30, 2002, appellant provided additional information with respect to her claim. Appellant stated that she did not usually work a split shift. On May 23, 2000 she was scheduled to work in the morning at Barberton because the supervisor there was going on vacation and appellant was unfamiliar with

the reports at Barberton. Appellant stated that she worked at Barberton from 7:00 a.m. to approximately 12:00 p.m.; she then stopped at a store and was on her way home when she was involved in a motor vehicle accident. She indicated that she had been scheduled to report to work at Norton at 2:30 p.m. Appellant confirmed that she was driving her personal vehicle; she stated that she was generally reimbursed .365 per mile. Appellant also noted that her house was between the Barberton and Norton work sites, and she would be eligible for all of the mileage between the work sites. The employing establishment was not asked to provide additional information.

In a decision dated July 24, 2002, an Office hearing representative affirmed the November 21, 2001 Office decision. The hearing representative found that, although traveling, the employee is within the course of employment throughout the trip, appellant had deviated for a personal errand and was not in the performance of duty at the time of the accident.

The Board finds the case is not in posture for decision.

In this case, the Office initially denied the case on the ground that appellant was excluded from coverage by the general rule that an employee is not in the performance of duty while coming and going to work.¹ The hearing representative appeared to find that appellant would have been covered from the time she left Barberton, except that she had deviated on a personal errand and therefore was not in the performance of duty.

The Board finds that a proper analysis of the case requires additional development of the factual evidence. Appellant has asserted that she was eligible for mileage reimbursement for her travel from Barberton to Norton, yet the record contains only a brief statement from a compensation specialist with respect to mileage from appellant's home to Barberton. It is important to determine whether appellant was a traveling employee on May 23, 2000 after she left the Barberton work site,² and one of the relevant factors is whether the employing establishment would reimburse appellant for her travel to Norton. There is also a discrepancy between the scheduled hours on May 23, 2000; the employing establishment reported that appellant's hours were 6:00 a.m. to 10:00 a.m. at Barberton, and 2:00 p.m. to 6:00 p.m. at Norton, while appellant stated that she worked 7:00 a.m. to 12:00 p.m. and was not scheduled at Norton until 2:30 p.m.

In addition, the evidence does not clearly establish appellant's route after leaving Barberton. The map in the record, for example, does not clearly establish the route appellant took to the toy store, or the route she took on her way home prior to the accident. Such information would be relevant to the issue of a deviation by a traveling employee.³

¹ See, e.g., *Valerie C. Boward*, 50 ECAB 126 (1998).

² The general rules with respect to traveling employees are found in 2 A. Larson, *The Law of Workers' Compensation* § 25.00 (2000).

³ See *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998).

The case will therefore be remanded for additional development on the relevant factual issues that are necessary to properly adjudicate this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated July 24, 2002 and November 21, 2001 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
June 27, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member