U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL BEAN-WELCH and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

Docket No. 03-714; Submitted on the Record;
Issued June 12, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on October 2, 2001.

On October 9, 2001 appellant, then a 39-year-old letter carrier filed a notice of traumatic injury alleging that she hurt her left shoulder when she was involved in a car accident in the employing establishment's parking lot on October 2, 2001. The record indicates that appellant was hit broadside by a truck when she was moving her car from one area of the parking lot to another parking space closer to the employing establishment's building. She stopped work on October 9, 2001 and has not returned.

In support of her claim, appellant submitted an accident report, medical treatment notes and a report from Dr. Mark Walden, a family practitioner, who opined that appellant sustained multiple strains to the left arm, left shoulder, hip and left foot as a result of her October 9, 2001 car accident.

In a letter dated October 19, 2001, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim for compensation.

In a November 23, 2001 letter, the employing establishment indicated that appellant was a letter carrier who used a postal vehicle to deliver the mail. It was noted that at the time of the alleged work injury appellant was driving her own car and was not performing any postal duty. The employing establishment stated: "It is important to note that moving her vehicle was at her own personal discretion, which was not authorized, directed or even known by management." It was noted that appellant was on the clock and that the accident took place on postal property, the parking lot, but that appellant had removed herself from her assigned workplace without the consent or knowledge or her supervisor.

In a December 17, 2001 decision, the Office denied compensation on the grounds that appellant failed to establish that she was injured in the performance of duty on October 2, 2001.

Appellant requested a hearing, which was held on September 20, 2002. She testified at the hearing that on October 2, 2001 she returned from mail delivery and was entering the parking lot in a postal vehicle when she spied an open parking space at the front of the lot close to the building. Appellant stated that she went inside the postal building, retrieved her personal car keys and then went on an afternoon break with the intention of moving her personal car to the more convenient parking spot. She alleged that most employees tried to move to parking spots closer to the buildings when available, although she could not state with any certainty whether the supervisors condoned the employees moving their private cars from the back of the lot to the front of the lot, closer to the building.

In a decision dated October 29, 2002, an Office hearing representative affirmed the Office's December 17, 2001 decision.

The Board finds that appellant has established that she sustained an injury on May 8, 1998 in the performance of duty.

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 her employment; liability does not attach merely upon the existence of any employee/employer relation.[1] The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] 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."[3] "In the course of employment" deals with the work setting, the locale and time of injury.[4] 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 her master's 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."[5]

[1] *Minnie N. Heubner (Robert A. Huebner)*, 2 ECAB 20 (1998); *Christine Lawrence*, 36 ECAB 422 (1985).

[2] See 5 U.S.C. § 8102(a).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Denis F. Rafferty*, 16 ECAB 413 (1965).

[5] *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

This alone is insufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[6]

As to an employee having fixed hours and a fixed place of work, an injury occurring on the premises of the employing establishment, while the employee is going to and from work, before or after working hours or at lunch time is compensable.[7] The Board has also held that the course of employment for employees having fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts and what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the activity.[8]

In this case, appellant was involved in a car accident while driving in the parking lot of the employing establishment's premises.[9] The record indicates that the employing establishment controlled and owned the parking lot.[10] Appellant was in the parking lot at the time of the accident because she went on a break during her normal work hours and decided to move her car from a parking spot in the back of the employing establishment's parking lot to a parking space that was closer to the employing establishment's building where she would be leaving at the end of her shift.

The Board finds that appellant was engaged in an activity which may be characterized as reasonably incidental to her employment. Although her activity of moving her car to a more convenient location in the parking lot was not required or even condoned by the employing establishment, the Board finds that it can be characterized as an activity reasonably incidental to her employment. The Board finds it reasonable to expect that employees might want to move their cars during the day to a more convenient parking space if those spaces became available. There is no evidence that the employees were prohibited from moving their cars during the work

[6] *See Eugene G. Chin*, 39 ECAB 598 (1988).

[7] *Michael K. Gallagher*, 48 ECAB 610 (1997); *Emma Varnerin*, 14 ECAB 253 (1963).

[8] *Narbik A. Karamian*, 40 ECAB 617 (1989).

[9] The record implies that the parking lot was owned and operated by the employing establishment for use by its employees; therefore, the car accident occurred within the "premises" of the employing establishment. *See generally Kimberly Kelly*, 51 ECAB 582 (2000).

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Performance of Duty, *Industrial Premises*, Chapter 2.804(4)(f) (August 1992). This section provides, regarding parking facilities, that: The industrial premises include the parking facilities owned, controlled or managed by the employer. An employee is in the performance of duty when injured while on such parking facilities unless engaged in an activity sufficient for removal from the scope of employment. In such cased, the official superior should be requested to state whether the parking facilities are owned, controlled or managed by the employer and whether the injury did in fact occur in the parking area. The claims examiner may approve the case when the official superior's response is affirmative and consistent with the other evidence.

shift or that employees were not allowed in the parking lot while on either authorized or unauthorized breaks. The Board considers the circumstances of this case to be similar to those incidents where an employee is on a break performing personal ministrations that does not necessarily take the employee out of the course of her employment. Because appellant was engaged in an action incidental to her employment on the employing establishment's premises at the time of her injury, the Board concludes that she has met her burden of proof to establish that she was in the performance of duty. The case is remanded to the Office for further development of the medical evidence to determine what, if any, injury was caused by the October 2, 2001 incident.

The decision of the Office of Workers' Compensation Programs dated October 29, 2002 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
June 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member