U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONA M. TATES and ENVIRONMENTAL PROTECTION AGENCY, Dallas, TX

Docket No. 03-892; Submitted on the Record;
Issued October 6, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant sustained an injury in the performance of duty on April 12, 2002, as alleged.

On June 12, 2002 appellant, then a 43-year-old environmental engineer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). Appellant alleged that on April 12, 2002 she was working at home pursuant to her flexiplace agreement. She noted that after her husband and a deliveryman had removed the mattress set from her bed, she passed through her bedroom, stepped inside the empty bed rail to pick something off the floor and fell over the bed rail as she was trying to leave the bedroom. Appellant's husband completed a witness statement on the claim form, verifying that appellant tripped over the bed rail and noting that when he went to her aid, she was lying on the floor in severe pain and could not move her left arm. He noted that he took appellant to the emergency room. Appellant's supervisor responded to the question, "Was employee injured in the performance of duty?" by stating, "Unsure. It appears [e]mployee was injured at home in a nonwork-related activity during work hours."

Appellant's flexiplace work agreement was submitted, which indicated that appellant's designated work area was a "well lighted area of a room which has been set aside for home office space."

In an August 19, 2002 letter, which was received by the Office on August 23, 2002 appellant indicated:

> "I am a participant in the Flexiplace program. I had a fall accident at 2:45 p.m., on April 12, 2002 when I was working at my home office, which is my alternate work location. I walked away from my computer to go to my bathroom area, which is suited to my bedroom. I walked out of my bathroom area and attempted to pass through my bedroom to return to my computer.

> "The normal pathway was blocked by mattresses, which my husband and a delivery man had removed from our bed. Therefore, I had to cross over my empty knee-high wooded bed rail to get out of the room. As I stepped across the bed rail I noticed an unidentified object on the floor. I picked up the object and then my foot got caught on the bed rail as I was trying to continue out of the room. I tripped and fell over the bed rail in a twisted flip. I ultimately landed on my left hand and bent my arm backward (hyper-extended) at the elbow, which dislocated and fractured my elbow."

By decision dated August 23, 2002, the Office of Workers' Compensation Programs denied appellant's claim because the initial evidence was insufficient to establish that the injury arose out of and in the course of employment because the injury happened in appellant's bedroom and not in the designated work area according to her flexiplace work agreement.

By letter dated September 19, 2002, appellant requested reconsideration. By decision dated November 19, 2002, the Office denied appellant's request.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of duty on April 12, 2002.

The Federal Employees' Compensation Act[1] 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 phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment." "In the course of employment" relates to the elements of time, place and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's business, at a place where she may reasonably be expected to be in connection with the employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3] The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

It is well settled that an employee who within the time and space limits of employment engages in an act that ministers to personal comfort, health, or necessity does not leave the course of employment and an injury sustained on her way to, from, or during a period of ministering to such needs is compensable as arising out of and in the course of employment, unless there is a departure so great that an intent to abandon the job temporarily may be inferred,

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] *Timothy K. Burns*, 44 ECAB 125 (1992).

[4] *John B. Shutack*, 54 ECAB ____ Docket No. 02-2143 (issued January 8, 2003); *see also Bettina M. Graf*, 47 ECAB 687 (1996).

or unless the conduct cannot be considered an incident of the employment.[5] Acts of personal comfort, such as eating a snack, using the bathroom or drinking water or other beverages, are generally considered to be in the performance of duty.[6]

In the instant case, however, appellant's injury did not occur at the offices of the employment establishment, but rather occurred in her home, which was her alternate workplace under her flexiplace agreement.

The Office's procedure manual includes a discussion of off-premises injuries sustained by workers who perform service at home.[7] The procedure manual states:

> "*Ordinarily, the protection of the FECA* does not extend to the employee's home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employer. The official superior should be requested to submit a statement showing--
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> > (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
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> > (b) The particular work the employee was performing when injured; and
> >
> > (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion."

The procedure manual section was supplemented on June 5, 1998 when the Office issued FECA Bulletin No. 98-9 pertaining to the performance of duty at alternative work sites. This bulletin acknowledged that federal agencies now have programs which allow employees to perform work from locations other than the federal agency's premises, including working from their home. The bulletin provides:

> "1. Employees who are directly engaged in performing the duties of their jobs are covered by the FECA, regardless of whether the work is performed on the agency's premises or at an alternative worksite. There is no statement (such as a 'safety checklist') that can be signed by the employee to negate this coverage. As

[5] *Dorothy F. Huber*, 19 ECAB 147 (1967) (the Board found that a mail carrier who was injured in an automobile accident while driving home to change her wet uniform before resuming duties at the employing establishment was in the performance of duty at the time of injury because the purpose of her travel home was not purely personal in nature, but inured to the benefit of the employing establishment).

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

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992).

always, any affirmative defense of 'willful misconduct' must be substantiated by the evidence that the employee disobeyed an order that was routinely enforced.

"2. However, when an employee is on property under his or her own control, activities which are not immediately directed towards the actual performance of regular duties do not arise out of employment. *An employee who works at a desk at home removes himself or herself from the performance of regular duties as soon as he or she walks away from that desk to use the bathroom, get a cup of coffee, or seek fresh air. The 'Personal Comfort Doctrine' does not apply, and coverage cannot be extended for injuries which result from such activities.*" (Emphasis added.)

The Bulletin notes that the environment in an employee's home is not under the employer's control and that the personal comfort doctrine that applies when the employee is on property owned or maintained by the employer is not relevant to such conditions.

In *Julietta M. Reynolds*,[8] the Board addressed the unique nature of flexiplace arrangements and noted that the Office did not abuse its discretion when it made a policy determination that only those injuries which occur while an employee is "actually performing his or her work at home" are considered to arise in the course of employment. In that case, the claimant was working at home when she got cold and the heat failed to come on when she adjusted the thermostat. Claimant called the oil company and received instructions on how to trip the furnace. Claimant indicated that she went to the basement where the furnace was located and upon climbing the steps to return upstairs, she fell on the stairway sustaining injuries to her right leg and left foot. In *Reynolds*, the Board found that the Office did not abuse its discretion in rescinding acceptance of appellant's claim. The Board also found that the Office's decision to exclude application of the personal comfort doctrine from situations, in which an employee is performing work at home did not conflict with the intent of the statue.[9]

In the instant case, appellant was returning from a trip to the bathroom, which was located in her bedroom suite, when she noted something on the carpet inside her bed frame. She stepped over the bed rail to pick up the item and tripped over the bed rail when returning to work. The Board finds that appellant was not in the course of employment at this time.

The personal comfort doctrine, evolved to provide coverage to employees while injured on the employing establishment's premises when ministering to their personal comfort. An employer can exercise control of the work environment on the employing establishment premises and can maintain safety to reduce the likelihood of workplace injury. However, the environment of an employee's home is not under the employer's control and is, accordingly, treated differently from an injury that occurs on the premises of the employing establishment. Therefore, the Board finds that the personal comfort doctrine does not apply when an employee is performing work at home. An employee working at home is removed from the performance of regular duties as soon as he or she walks away from his or her desk to use the bathroom, get a

[8] *Julietta M. Reynolds* 50 ECAB 529 (1999).

[9] *Id*. at 534, 535.

drink of water or, as in the case at hand, pick up something off the floor when returning from the bathroom.[10] Therefore, as appellant was not in the performance of duty when she was injured the Office properly denied appellant's claim.

The decisions of the Office of Workers' Compensation Programs dated November 19 and August 23, 2002 are hereby affirmed.

Dated, Washington, DC
October 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[10] *Id*.