

**United States Department of Labor
Employees' Compensation Appeals Board**

ANNIE L. IVEY, Appellant)	
)	
and)	Docket No. 02-1855
)	Issued: April 29, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Capitol Heights, MD, Employer)	
)	

Appearances: Oral Argument April 15, 2004
Annie L. Ivey, pro se
Andrew Schultz, Esq., for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 3, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 2, 2002 merit decision in which the Office denied that appellant sustained an injury in the performance of her federal duties. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of her federal duties.

FACTUAL HISTORY

On February 18, 2002 appellant, a 45-year-old clerk, filed an occupational disease claim alleging that she was exposed to Anthrax in the performance of her federal duties. Appellant stated that on October 15, 2001 she went to the Brentwood Postal Facility in Washington, DC, to deliver a 991 application for a "detail" to that facility. At the time of the alleged exposure,

appellant worked at the Capitol Heights, Maryland, Postal Facility and was not on duty. Appellant does not allege that she was at the facility at the request of her supervisor.

According to appellant, while she was waiting for someone from the human resources department, she experienced severe sinus problems and an immediate sinus headache. Appellant stated that she was scheduled to work that day, but due to her sinus problems she did not go to work. Appellant stated that she later heard a news report that any postal employees who were at the Brentwood facility between October 11 and 22, 2001 should report to a local hospital for testing. Appellant reported to the hospital and was provided with a 10-day supply of Cipro and 50-day supply of Doxycycline. Appellant was later given a 40-day supply of antibiotics by medical specialists.

In a March 4, 2002 letter, the employing establishment controverted appellant's claim stating that she was absent from work at least two days prior to October 15, 2001 and that appellant did not miss any work after the date of her alleged exposure as she had exhausted her annual and sick leave. Appellant submitted no evidence supporting her allegation that she was exposed to Anthrax.

In a May 2, 2002 decision, the Office denied appellant's claim, finding that the alleged exposure did not occur in the performance of her federal duties.

LEGAL PRECEDENT

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. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." The phrase "course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance.² In addressing this issue, the Board has stated the following:

"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 employer'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."³

¹ See 5 U.S.C. § 8102(a).

² *Alan G. Williams*, 52 ECAB 180 (2000).

³ *Id.*

This alone is not sufficient 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.⁴

ANALYSIS

In the present case, appellant has not established that she was in the performance of her federal duties when she was allegedly exposed to Anthrax. There is no evidence in the record to support that she was engaged in her employer’s business while at the Brentwood facility. To the contrary, appellant indicated that she was at the facility to seek a “detail” or transfer from her employer’s premises. Appellant was also not at a place where she could reasonably be expected to be in connection with her employment. Appellant worked in the Capitol Heights Postal Facility and there is no evidence in the record supporting that her work there was related or would cause her to be expected to visit the Brentwood facility. Finally, there is no evidence in the record to support that appellant was fulfilling the duties of her employment by being at the Brentwood facility.

Moreover, appellant has not submitted any objective evidence that she sustained an injury. She has submitted her personal statement that she was exposed to Anthrax and took medicine in response to the threat of Anthrax exposure. However, appellant submitted no medical evidence to support her statement.

CONCLUSION

Appellant has not established that she sustained an injury in the performance of her federal duties.

⁴ *Eileen R. Gibbons*, 52 ECAB 209 (2001).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2002 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member