United States Department of Labor
Employees' Compensation Appeals Board

BARBARA J. SNYDER, Appellant	)	
and	)	**Docket No. 04-319**
	)	**Issued: April 15, 2004**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Palatine, IL, Employer	)	

Appearances:
Barbara J. Snyder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 18, 2003 appellant filed an appeal of a July 16, 2003 merit decision of the Office of Workers' Compensation Programs. 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 has met her burden of proof to establish that she sustained an injury in the performance of duty on February 12, 2003.

FACTUAL HISTORY

On March 7, 2003 appellant, then a 57-year-old operations support specialist, filed a claim for a fracture and contusion of the left wrist occurring on February 12, 2003 when she "slipped on ice, walking towards Dearborne on Jackson." On the reverse side of the claim form, appellant's supervisor contended that appellant was not in the performance of duty at the time of the incident because she was "walking on Jackson St[reet] in Chicago."

By letter dated March 18, 2003, Gilbert Lopez, an official with the employing establishment, challenged appellant's claim. Mr. Lopez stated:

> "The claimant was walking towards Dearborn St[reet] on Jackson St[reet] in downtown Chicago when her feet slipped from under causing the injury to her left wrist.
>
> "The claimant is on a detail assignment with the 'Combined Federal Campaign (CFC)' and she was on route to the home office of the CFC when the incident occurred. Since this detail assignment was her reporting office, how she got from point A to point B was her responsibility."

By letter dated June 10, 2003, the Office requested additional medical and factual information from appellant. In a response dated July 3, 2003, appellant related that the incident occurred between 9:30 and 10:00 in the morning as she walked from the train station to the Chicago CFC office for a staff meeting scheduled at 10:00 a.m. Appellant noted that she traveled by train from her home to Chicago. She contended that she was in the performance of duty when she fell because her transportation expenses were covered by the employing establishment. Appellant noted that since she began working on the CFC campaign in July 2002 she had traveled to over 600 employing establishment locations. She stated:

> "July through February I used Metra instead of my personal or postal car to travel to Chicago on scheduled days (parking is very expensive). When I travel to the 601 [p]ost [o]ffices, the area [p]lants or the [d]istrict, I use a postal car. From September 10, 2002 through February 12, 2003, I traveled either by train or postal car to many postal sites as the CFC Loaned Executive. My travel by train or postal car is paid by the [employing establishment]. From the time I left my home and until I arrive back to my home, I am in a detail status. The position is not a nine-to-five job."

Appellant further related:

> "In the Loaned Executive training held the last part of July 2002, travel time was noted as a core ingredient of the detail (75-80 [percent] of the detail entails travel). The amount of hours spent in travel, training, motivational presentations and event planning are as one package the core duties of the detail assignment. Each is a necessity or viable tool used in the CFC Loaned Executive performance of duty. My understanding, an understanding I hope was not flawed, had me to believe that from the time I left my home until I arrive[d] to the assigned office building, training site, or post office, and from there back to my home, I was in the performance of duty."

By decision dated July 16, 2003, the Office denied appellant's claim on the grounds that she was not in the performance of duty at the time of her fall on February 12, 2003.

LEGAL PRECEDENT

In providing for a compensation programs for federal employees, Congress 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 an employee/employer relationship.[1] 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. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." "In the course of employment" deals with the work setting, the locale and the time of injury whereas "arising out of employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.[2] In addressing the issue, the Board stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonable be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in something incidental thereto."[3]

The Board has recognized, as a general rule, that off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment.[4] Such injuries are merely the ordinary, nonemployment hazards of the journey itself which are dependent upon the particular facts relative to each claim. These exceptions pertain to the following instances: (1) where the employment requires the employee to travel on highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of a fireman; and (4) where the employee uses the highway to do something incidental to her employment with the knowledge and approval of the employer.[5]

ANALYSIS

In this case, appellant slipped and fell on a public road outside the premises of the employing establishment during her commute from her home to her detail assignment. The Office, citing *Linda S. Jackson*,[6] denied her claim on the grounds that she was not in the

[1] *George A. Fenske*, 11 ECAB 471 (1960).

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

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

[4] *Paul R. Gabriel*, 50 ECAB 156 (1998).

[5] *Id*.

[6] 49 ECAB 486 (1998).

performance of duty. In *Jackson*, the Board found that appellant was not covered while commuting from her home to her detail assignment because "she had a fixed place of work, with fixed hours and the employing establishment did not compensate appellant nor have any obligation to compensate appellant for her commuting costs to and from said detail."[7] In this case, however, appellant argued that the employing establishment paid her commuting expenses. She further contended that her travel hours from home to her detail site were included as part of her duty hours. Larson, in his treatise on workers' compensation, states:

> "When the employee is paid an identifiable amount as compensation for time spent in a going or coming trip, the trip is within the course of employment. This is a clear application of the underlying principle that a journey is compensable if the making of that journey is part of the service for which the employee is compensated."[8]

Additionally, Larson notes that coverage is usually afforded in cases "involving a deliberate and substantial payment for the expense of travel, or the provision of an automobile under the employee's control" as the "employment should be deemed to include travel when travel itself is a substantial part of the service performed."[9]

The employing establishment did not address on appellant's contention that her travel hours were paid for and included as part of her duty shift. It is also unclear from the record whether the employing establishment paid appellant's transportation costs. The Board, therefore, finds that the record requires further factual development to determine whether appellant's fall on July 16, 2003 occurred in the performance of duty. On remand, the Office should determine whether the employing establishment paid appellant for her travel hours and travel expenses. After such further development as is deemed necessary, the Office should issue a *de novo* decision.

CONCLUSION

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

[7] *Id*.

[8] Larson, *The Law of Workers' Compensation* § 14.06 (2000).

[9] *Id*. at § 14.07(1); *see also Mary Margaret Grant*, 48 ECAB 696 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July l6, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 15, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member