

2004 at approximately 6:00 p.m. He was in a travel or temporary duty (TDY) status for the purpose of an information meeting at the time. Appellant stated:

“We had flown into Orlando Airport that morning and immediately drove to Cocoa Beach to our hotel. I checked in and then we (The AMHAZ team) went to lunch before departing for Cape Canaveral, the U.S. Air Force Station and the Navy detachment there. After finishing at the station we returned to the hotel and a group of us (Tina Kirby, Capt. March Mitchell, USMC, Gary Hogue, Jarrett Beard and myself) immediately changed clothes and went to the beach to exercise (by walking) for an hour. We walked for 30 minutes south on the beach then reversed directions and were returning to the hotel when we saw a Great Blue Heron fly into a fisherman’s line and become entangled. Fearing he would hurt himself trying to get free, we went to his rescue. After freeing his left wing the bird turned and struck me in the eyes and nose.”¹

Medical evidence indicated that appellant suffered a penetrating eye trauma and bilateral corneal abrasion.

In a decision dated April 8, 2004, the Office denied appellant’s claim on the grounds that his injury was not established to have occurred while in the performance of duty.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides 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.”³ To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer’s business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.⁴

The Act covers an employee 24 hours a day when the employee is on travel status, a temporary assignment or a special mission and is engaged in activities essential or incidental to such duties. When an employee deviates from the normal incidents of the trip and engages in activities, personal or otherwise, that are not reasonably incidental to the duties of the temporary

¹ Mr. Hogue stated that the beach was adjacent to the hotel.

² 5 U.S.C. § 8102(a).

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during these deviations is not compensable.⁵

ANALYSIS

The time and place elements of work connection are not an issue in this case. Appellant was on TDY, so it may reasonably be said that his injury occurred at a time when he was engaged in his employer's business. As he was staying in a beachfront hotel, his injury on the beach occurred at a place where he was reasonably expected to be.

It is the activity element of work connection that the evidence fails to establish. Appellant has not shown how helping to free an entangled bird would be a normal incident of his trip. There simply is no evidence that he sustained his injury while engaged in an activity that was reasonably incidental to the duties contemplated by his employer. The Board therefore finds that appellant ceased to be under the protection of the Act when he attempted to free the bird. His injury during this deviation is not compensable.

CONCLUSION

The Board finds that appellant's injury on February 4, 2004 did not arise in the course of employment. Although he was on TDY, he was not engaged in an activity essential or incidental to his duties at the time of his injury.

⁵ *Janice K. Matsumura*, 38 ECAB 262 (1986). See generally 2A. Larson, *Workers' Compensation Law* at 20-1 (May 2000): "A compensable injury must arise not only within the time and space limits of the employment, but also in the course of an activity related to the employment. An activity is related to the employment if it carries out the employer's purposes or advances its interests directly or indirectly. Under the modern trend of decisions, even if the activity cannot be said in any sense to advance the employer's interests, it may still be in the course of employment if, in view of the nature to the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the condition of that employment."

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member