

Appellant submitted a narrative statement indicating that he was driving in the performance of his federal duties to pick up an empty trailer when he “lost consciousness for one or two seconds” causing him to hit a post. Appellant related that he was on the employing establishment premises driving from “the loaded lot to the empty lot” when he lost consciousness and drifted into a post at the northwest corner of the scale. Appellant noted that it was a “gray and dreary” morning with falling snow.

The Office requested additional factual and medical evidence from appellant in a letter dated May 2, 2003.

In a report dated April 9, 2003, received by the Office on May 16, 2003, Dr. John P. Zornosa, a Board-certified cardiologist, noted that appellant experienced a syncopal event while driving. He stated that appellant had an abnormal tilt table test. A computed tomography scan was reported as normal.

Dr. Michael L. Gluck, a physician Board-certified in geriatric medicine, discharged appellant from the hospital with a diagnosis of syncope on April 9, 2003. He noted that appellant had a past history of obstructive central sleep apnea and recommended further sleep studies.

Dr. Donald E. Potter, Jr., a Board-certified endocrinologist, completed a report on May 22, 2003 and stated that appellant’s sleep study results were positive. Appellant was diagnosed with sleep apnea “which could have caused him to fall asleep and have his accident.”

Appellant submitted a statement dated June 4, 2003 in which he noted that the sleep study on May 8, 2003 revealed sleep apnea.

By decision dated June 2, 2003, the Office denied appellant’s claim on the basis that there was insufficient information to establish that any employment factor contributed to the incident, noting the diagnosed condition of sleep apnea.

Appellant requested reconsideration on March 25, 2004. The Office referred appellant’s claim to the Office medical adviser who reviewed the medical evidence on June 6, 2004 and concluded that appellant’s loss of consciousness was due to sleep apnea.

By decision dated June 8, 2004, the Office denied modification of the June 2, 2003 decision attributing appellant’s accident to the sleep apnea condition.

LEGAL PRECEDENT

Congress, in providing 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 relationship.¹ Instead, Congress provided for the payment of compensation for personal injuries sustained while in the

¹ *Janet M. Abner*, 53 ECAB ____ (Docket No. 00-1838, issued January 2, 2002).

performance of duty. 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.” 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 his or her master’s business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.”

In determining whether an injury occurs in a place where the employee may reasonably be expected to be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee’s work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.²

ANALYSIS

Appellant, a motor vehicle operator, experienced a loss of consciousness or briefly fell asleep on April 7, 2003 while driving a truck on the employing establishment premises in the performance of his federal duties. Appellant was on the employing establishment premises during his regular working hours and was performing the duties of his employment. Due to this loss of consciousness, the truck he was driving struck a pole and he sustained injuries to his stomach and right leg. The Board finds that appellant was in the performance of duty at the time that this employment incident occurred.

In his treatise on workers’ compensation law, Larson states that, if a worker falls asleep unintentionally, this is not an abandonment of employment.³ Larson’s specifically mentions that while a truck driver has a duty to stay awake while driving, no modern court would deny compensation to such a driver because an accident was caused by the unintentional dozing of the driver.⁴

The medical evidence of record linked appellant’s loss of consciousness to sleep apnea. The Office, therefore, found this situation analogous to that found in the cases regarding idiopathic or unexplained falls, and concluded that appellant was not in the performance of duty at the time his injury occurred. Neither the Board nor other authorities have followed this analogy to reach the Office’s conclusion. As appellant did not fall down as a result of an idiopathic condition, but instead inadvertently fell asleep while in the performance of his duties

² *Id.*

³ A. Larson, *The Law of Workers’ Compensation* § 21.07[2] (2000).

⁴ *Id.* Compare *Tia L. Love*, 40 ECAB 586, 592-93 (1989) (in which the Board found that the Office had not addressed whether falling asleep in the restroom constituted a departure from her duties so great that an intent to abandon the job temporarily may be inferred).

as a truck driver, the Board finds that the employment incident occurred in the performance of duty entitling him to coverage for any injuries or disability arising from this incident.

CONCLUSION

The Board finds that appellant has established that his April 7, 2003 incident occurred in the performance of duty. On remand, the Office should develop the medical evidence to determine if this incident resulted in a compensable injury or disability for work.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2004 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: March 25, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member