

the Norton Post Office (Norton), but on May 23, 2000 she was scheduled to work at the Barberton Post Office (Barberton) in the morning and then resume working at Norton in the afternoon. Appellant was involved in a motor vehicle accident after she left Barberton. The Board noted that the record did not establish the actual hours worked in the morning, the route taken after leaving Barberton or whether appellant was paid for travel between Barberton and Norton. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a letter dated October 7, 2003, the Barberton postmaster responded to questions regarding the May 23, 2000 incident. The postmaster stated that "yes" appellant was a traveling employee on May 23, 2000 after she left Barberton, and that she was reimbursed for travel to Norton. According to the postmaster, appellant was scheduled to work from 7:00 a.m. to 12:00 p.m. at Barberton, then work from 2:30 p.m. to 6:00 p.m. at Norton, with an extended lunch break in between to avoid overtime pay. The record also contains a report of telephone call dated December 3, 2003 indicating that appellant stated the accident occurred at 1:30 p.m., and that she was paid for travel between the work sites, not from her house to the work sites. Maps of the area showing the route taken by appellant were submitted. The maps indicated that appellant headed north after leaving Barberton, went west on Norton Avenue and then north on Clark Mill road to reach a toy store; at the time of the accident she was south bound on Clark Mill Road at the intersection with Norton Avenue. Appellant's home is directly west of Barberton.

In a decision dated December 10, 2003, the Office denied the claim for compensation, finding that the accident did not occur while in the performance of duty as it occurred during nonscheduled time and appellant was returning home after completing a personal errand.

Appellant requested a hearing, which was held on June 22, 2004. At the hearing appellant indicated that her usual work site was Norton, but on May 23, 2000 she was scheduled to work at Barberton in the morning because a supervisor at Barberton was on vacation. Appellant noted that the assignment was to last a week. According to appellant, Barberton and Norton are approximately two miles apart, and when she left Barberton on May 23, 2000 she drove to a toy store, and then was on her way home for lunch when the accident occurred. Appellant noted that the toy store was not on a direct route from Barberton to her home; she was asked if she had returned to a route she normally would have taken to her house, and she responded "correct." The hearing representative noted that there were other more direct routes from Barberton to her home, and appellant stated that there were several different ways of going between Barberton and her home.

By decision dated September 8, 2004, the hearing representative affirmed the December 10, 2003 decision, finding that appellant was not in the performance of duty at the time of the accident.

LEGAL PRECEDENT

An employee whose work entails travel away from the employer's premises is held to be within the course of his or her employment continuously during the trip, except when a distinct

departure on a personal errand is shown.² When the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Federal Employees' Compensation Act and any injury occurring during these deviations is not compensable.³

ANALYSIS

The relevant facts are not in dispute: on May 23, 2000 appellant worked from 7:00 a.m. to 12:00 p.m. at Barberton and was scheduled to report to Norton at 2:30 p.m. Appellant was told to take an extended lunch in the interim, so that she would not work more than her normal hours in the day. After leaving Barberton, appellant drove north to a toy store, and then was heading south toward her home for lunch when she was involved in a motor vehicle accident.

The initial question presented is to determine appellant's work status from 12:00 p.m., when she left Barberton, until 2:30 p.m., when she was to report at Norton. If appellant had been told to go directly from Barberton to Norton, then the issue would be whether she was on a route between Barberton and Norton, or if she had deviated from such a route, whether she had returned to the route.⁴ In this case, however, appellant is required to travel between two work sites, but is directed to take an extended lunch break of approximately two and a half hours. A lunch break off the premises, when an employee has a single designated work site, is generally not covered.⁵ But here the employing establishment indicated that it considered appellant to be a traveling employee, who was entitled to reimbursement for travel between Barberton and Norton. On May 23, 2000 appellant did not have a single work site, but was expected to work at two different sites and to be paid travel. The Board finds that her situation is that of a traveling employee between 12:00 and 2:30 p.m.

As a traveling employee, appellant is normally covered for activity reasonably incident to the employment. But it is a well-recognized rule that a deviation for a personal errand will take an employee out of coverage. In this case, appellant did undertake a personal errand to go to a toy store. The personal errand is a deviation that takes her out of coverage under the Act. The deviation is not completed as soon as appellant leaves the toy store, but when she reaches a location that is consistent with a reasonably incidental activity of a traveling employee.⁶ Although appellant argued that the location of the actual accident was on a route she could be expected to take from Barberton to her home, evidence of the record does not support her contention. The intersection of Clark Mill and Norton Avenue is north of both Barberton and her

² *George D. Cockerham*, 49 ECAB 678 (1998); see also A. Larson, *The Law of Workers' Compensation* § 25.00 (2004).

³ *Evelyn S. Ibarra*, 45 ECAB 840 (1994).

⁴ See *Amy Ureel (Michael Ureel)*, 51 ECAB 260 (1999).

⁵ A. Larson, *The Law of Workers' Compensation* § 21.02(3) (2004).

⁶ See *Amy Ureel (Michael Ureel)*, *supra* note 4; A. Larson, *The Law of Workers' Compensation* § 17.03(3) (2004).

home and, as noted by the hearing representative, the map shows a number of shorter, more direct routes between Barberton and appellant's home. Based on the evidence of record, appellant was at the intersection of Clark Mill and Norton Avenue for the purpose of a personal errand to the toy store. Therefore the personal errand deviation had not ended at the time of the accident and appellant was not in the performance of duty at the time her injuries were sustained.

CONCLUSION

The Board finds that appellant was a traveling employee but there was a distinct departure on a personal errand and appellant was not in the performance of duty when injured on May 23, 2000.

ORDER

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

Issued: March 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member