United States Department of Labor
Employees' Compensation Appeals Board

PHYLLIS A. SJOBERG, Appellant	)	
and	)	**Docket No. 06-114**
	)	**Issued: February 8, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Longmont, CO, Employer	)	

Appearances:
Phyllis A. Sjoberg, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 17, 2005 appellant filed a timely appeal of a September 15, 2005 decision of the Office of Workers' Compensation Programs denying merit review of her claim for an injury on October 27, 2004. The record also contains merit decisions dated December 22, 2004 and March 28, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant was in the performance of duty on October 27, 2004 at the time of the alleged injury; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 2, 2004 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in a motor vehicle accident on October 27, 2004. Appellant stated that she was a union steward and was traveling to the general mail facility for a 7:30 a.m. grievance hearing when she was involved in a motor vehicle accident

at approximately 6:30.a.m. In a statement dated December 7, 2004, Bruce Born, a labor relations specialist at the employing establishment, indicated that appellant was scheduled to meet with him on October 27, 2004 at 7:30 a.m. at his office in Denver. Mr. Born reported that there were four Step 2 grievances that would be discussed at the meeting. He indicated that he and appellant normally met at least once a month, depending on the number of grievances.

Appellant's postmaster stated in a November 4, 2004 letter, that appellant was in a leave without pay (LWOP) status on October 27, 2004. The postmaster reported that appellant was paid by the union, not by the employing establishment.

By decision dated December 22, 2004, the Office denied the claim for compensation on the grounds that appellant was not in the performance of duty. Appellant requested reconsideration by letter dated December 28, 2004. She contended that union activities were covered for representational functions that would entitle the employee to official time. Appellant also argued that her home was a duty station for union steward duties and she was required to travel from home to a meeting with the labor relations specialist. She indicated that her activities were a benefit to the employer and should be covered.

In a decision dated March 28, 2005, the Office denied modification of its prior decision. Appellant again requested reconsideration by letter dated July 16, 2005. She noted provisions of the employment agreement regarding LWOP, Step 2 grievance procedures, and leave related to union business and reiterated her arguments that her injury was in the performance of duty.

By decision dated September 15, 2005, the Office denied the request for reconsideration without merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[2] 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. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[3]

Exceptions to this general coming and going rule have been recognized, which are dependent upon the relative facts to each claim: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[3] *Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his or her employment with the knowledge and approval of the employer.[4]

There are additional exceptions to the coming and going rule. The Act, for example, 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.[5] Larson describes a "special errand" rule as follows: "When an employee, having identifiable time and space limits on the employment, makes an off-premises journey, which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey; or the special inconvenience, hazard; or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself."[6]

ANALYSIS -- ISSUE 1

In the present case, appellant, a union steward, left home on the morning of October 27, 2004 for a 7:30 a.m. meeting with a labor relations specialist at an employing establishment facility.[7] Although the mail facility apparently was not appellant's usual work site for her rural carrier duties, it was an employing establishment work site that appellant regularly attended for union representational activity. The motor vehicle accident occurred off premises at 6:30 a.m. as appellant was driving to the scheduled meeting. As noted above, the general coming and going rule would preclude coverage under the Act for this injury. Appellant must establish that an exception to the general rule is applicable in this case. There are, however, no recognized exceptions that are applicable under these circumstances. No evidence was presented as to an emergency call, a contract by the employer for transportation, a requirement of travel by highways or use of the highway for an incident of employment with knowledge and approval of the employer. With respect to a "special errand," there is no indication that the employing establishment expressly or impliedly agreed that employment service should begin when appellant left home on October 27, 2004, nor any special inconvenience, hazard or urgency of travel that would bring it within coverage under the Act. The record does not establish that

[4] *Melvin Silver*, 45 ECAB 677 (1994); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

[5] *Janice K. Matsumura*, 38 ECAB 262 (1986).

[6] A. Larson, *The Law of Workers' Compensation* § 14.05(1) (2000). The Board has indicated that a special errand is a situation where the employer is deemed to have agreed, expressly or impliedly, that the employment service should begin when the employee leaves home to perform a special errand. *See Elmer L. Cooke*, 16 ECAB 163 (1964).

[7] The general rule is that union activities are personal in nature and not within the course of employment; an exception to the rule is recognized where the activity undertaken by the employee in her capacity as a union official may serve the interests of the employer under a mutual benefit theory. *See Larry D. Passalacqua*, 32 ECAB 1859 (1982); *see also Marie Boylan* 45 ECAB 338 (1994).

appellant was in a travel status at the time of injury; she was using LWOP and there is no indication that she was reimbursed for travel to the general mail facility.[8]

Appellant stated briefly that she performed union activity at home. The Board has recognized a limited exception to the coming and going rule when appellant performs work regularly at home with the knowledge and consent of the employer or where there is an essential continuity of the work done at home and that performed at the regular place of employment.[9] Appellant did not provide any details regarding the nature and extent of the activity performed at home, knowledge and consent of the employer or other relevant information.

The Board finds that the evidence of record does not establish that an exception to the coming and going rule was applicable in this case. Appellant was not in the performance of duty at the time of the motor vehicle accident on October 27, 2004 and the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10]

ANALYSIS -- ISSUE 2

On reconsideration appellant reiterated her belief that she should be covered under the Act but did not provide any new and relevant evidence. The issue involves the coming and

[8] For cases involving travel to a training seminar, *see Sondra J. Mills*, 33 ECAB 1092 (1982); *see also Janet R. Landesberg*, 50 ECAB 538 (1999).

[9] *See Connie J. Higgins* (*Charles H. Higgins*), 53 ECAB 451 (2002); *Melvin Silver*, *supra* note 4.

[10] *Eugene F. Butler*, 36 ECAB 393 (1984).

going rule and exceptions to that rule and appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office. Since appellant did not meet any of the requirements of section 10.606(b)(2), she is not entitled to a merit review of her case.

CONCLUSION

The Board finds that appellant was not in the performance of duty when injured on October 27, 2004. The Board further finds that the Office properly denied the request for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs' dated September 15 and March 28, 2005 and December 22, 2004 are affirmed.

Issued: February 8, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board