# United States Department of Labor
# Employees' Compensation Appeals Board

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| **DAVID P. SAWCHUK, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1635** |
| | ) | **Issued: January 13, 2006** |
| **U.S. POSTAL SERVICE, POST OFFICE, Petoskey, MI, Employer** | ) | |

*Appearances:*
*David P. Sawchuk, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On August 2, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 9, 2005 which found that he did not sustain an injury in the performance of duty. 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 was injured while in the performance of duty on April 15, 2005.

### *FACTUAL HISTORY*

On April 22, 2005 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim alleging that on April 15, 2005 he sustained a left chest wall strain and torn cartilage, while lifting a damaged window on his vehicle. The claim was controverted by the employing

establishment. By letter dated May 6, 2005, the Office requested that appellant submit further information. In response, appellant submitted the following statement:

> "On April 15th at approximately 11:30 a.m. I was delivering mail at the Crestview Apartments in Petoskey. I opened the right rear electric window of my 1989 Dodge Caravan which is my postal vehicle, when the pivot-arm connecting to the widow broke apart causing the window to slide out of its track. I then exited the vehicle and grabbed the window to keep it from falling off. I was holding the window with both hands trying to slide the window back into its track, and as I turned I heard and felt a tear in my chest. It was painful and became worse over time. I was able to wire the window closed and finished my route, which was near completion. I returned to the post office and informed my postmaster and supervisor that I had injured myself on my route and that the pain was becoming more severe. I was then given proper paperwork and was instructed to go to a doctor."

Appellant also submitted treatment records from Dr. Gustav J. Lo, a specialist in occupational medicine, dated between April 15 and May 19, 2005, an April 15, 2005 medical report from Dr. Marcin Jankowski, an osteopath, and an April 18, 2005 report by a physician's assistant.

By decision dated June 9, 2005, the Office denied appellant's claim, finding that the evidence did not establish that he was injured in the performance of duty. The Office noted that the injuries occurred while appellant was making repairs to his personal vehicle, which was his responsibility to maintain. Therefore, the injuries of April 15, 2005 did not occur in the performance of duty. The Office also noted that the medical evidence was not sufficient to support the claim.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury." These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against each and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

attach merely upon the existence of an employee/employer relation.[3] 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 prerequisite in workers' compensation law of "arising out of and in the course of employment."[4] 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 master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[5]

In determining whether an injury occurs in a place where the employee may reasonably 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.

The Office's procedure manual includes letter carriers in the first of four general classes of off-premises workers.[6] In determining whether this class of employees has sustained an injury in the performance of duty, the factual evidence must be examined to ascertain whether, at the time of injury, the employee is within the period of the employment, at a place where the employee reasonably may be and while the employee is fulfilling employment duties or engaged in activities reasonably incidental thereto.[7]

Larson, in his treatise on workers' compensation law, notes a close relationship between the deviation doctrine and personal comfort doctrine in those cases where the smallness of the deviation is immaterial.[8] These "insubstantial" deviations, then, are largely the kind of momentary diversions which, if undertaken by an inside employee working under fixed time and place limitations, would be compensable under the personal comfort doctrine.

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[3] *Bruce A. Henderson*, 39 ECAB 692 (1988); *Minnjie M. Huebner*, 2 ECAB 2 (1948).

[4] *Bernard D. Blum*, 1 ECAB 1, 2 (1947).

[5] *Melvin Silver* 45 ECAB 677 (1994); *Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58, 59 (1954).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a)(1). *See Donna K. Shuler*, 38 ECAB 273 (1986).

[7] *Thomas E. Keplinger*, 46 ECAB 699 (1995).

[8] A. Larson, *The Law of Workers' Compensation*, Vol. 1, § 17.06[3].

## ***ANALYSIS***

The Board finds that the Office improperly determined that appellant was not in the performance of duty when the alleged injury occurred.

In *Rebecca LeMaster*,[9] the employee was a rural letter carrier who used her own vehicle for delivering mail. She was on her assigned delivery route when she encountered difficulty with her motor vehicle. Her left rear tire was low and she proceeded to a nearby convenience store to put more air in the tire. Appellant "was going to drive a mile up to make sure the jeep was okay" when she lost control of the vehicle and sustained an injury. The Board held that appellant was reasonably engaged in her master's business at the time of her injury. The Board noted that the departure from appellant's route was not made for some purely personal objective but was a necessary ancillary activity which was made to assure the repair of the motor conveyance she used in her employment. The Board noted that, if an employee uses her own vehicle for her work business, the course of employment may be held to extend beyond the actual business trip to necessary ancillary duties, including the repair of the vehicle. The Board noted that, when the vehicle is a mandatory part of the employment environment, it is a service to the employer to convey to the premises a major piece of employment, which is devoted to the purposes of the employing establishment. The Board found that the employee was engaged in activities reasonably incidental to her master's business at the time of the motor vehicle accident and that her injury was sustained in the performance of duty.

In this case, appellant alleged that at the time of the injury, he was in the process of delivering mail. He noted that, while doing so, the window of his motor vehicle broke and while trying to fix it, he sustained an injury. The employing establishment has not contradicted appellant's version of these facts. The Board notes that an employee's statement regarding the occurrence of an employment incident will stand unless refuted by strong or persuasive evidence.[10] As in the *LeMaster* case, appellant was injured while he was engaged in his master's business of delivering mail. The injury occurred at a place where he was expected to be in connection with his employment, *i.e.*, the Crestview apartments. Appellant was reasonably fulfilling the duties of his employment or activities incidental thereto. Although appellant's vehicle was a personal vehicle, it was mandatory for his employment as a rural route carrier. Adjusting the window was incidental to his employment. There was no substantial deviation or departure from his work assignment that occurred when he exited the vehicle to adjust the window. This activity enabled him to continue his mail route. Accordingly, the Board finds that appellant was delivering mail at the time of his alleged injury, and was in the performance of duty.

[9] 50 ECAB 254 (1999).

[10] *Thelma Rogers*, 42 ECAB 866 (1991).

The Office never fully addressed the issue of whether the medical evidence established that an injury occurred causally related to this employment incident.[11] The Board will remand the case for review of the notes from Drs. Lo and Jankowski.

## ***CONCLUSION***

The Board finds that appellant was injured in the performance of duty. The case is remanded for further development with regard to the medical evidence, to be followed by a *de novo* decision.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 9, 2005 is reversed, and this case is remanded for further consideration consistent with this opinion.

Issued: January 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[11] The Office properly noted that physician's assistant's notes are not sufficient evidence to support the claim as lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act. *See Robert J. Krstyen,* 44 ECAB 227, 229 (1992).