

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

**TERESA WATERS-WATKINS, claiming as
sister of JONATHAN MURRAY, Appellant**

and

**DEPARTMENT OF LABOR, PITTSBURGH
JOB CORPS, Pittsburgh, PA, Employer**

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**Docket No. 06-321
Issued: March 16, 2006**

Appearances:
Teresa Waters-Watkins, 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 November 21, 2005 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated May 26 and October 31, 2005. 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 the employee's death on April 9, 2005 was sustained in the performance of duty.

FACTUAL HISTORY

On April 14, 2005 appellant, claiming as sister of the deceased, filed a claim for compensation (Form CA-5b) alleging that on April 9, 2005 her brother died while in the performance of duty as a job corps enrollee. Appellant submitted a copy of her brother's birth certificate, as well as a copy of his death certificate dated April 13, 2005, reflecting that the cause of death was cardiac tamponade and rupture of ascending aorta. A Form CA-8 dated April 13,

2005 and signed by the director of the Pittsburgh Job Corps Center, reflected that the enrollee went into cardiac arrest while he was playing football “off center” at an unsupervised football game. An unsigned statement entitled “Attachment: CA-6” reflected that he had enrolled as a student at the Job Corps Center on April 5, 2005. The form further reflects that he collapsed during a “pick-up” football game approximately one-half mile from the Center, where a group of students had gathered.

In a May 2, 2005 informational letter to Ernest Walker, brother of the deceased, the Office provided Form CA-5b and advised that factual and medical information would be required to support any claim for survivor benefits.

By decision dated May 26, 2005, the Office denied appellant’s claim for compensation on the grounds that the evidence failed to establish that the enrollee was in the performance of duty at the time of his death, in that he was engaged in an off-premises activity that was unauthorized and unsupervised.

A conference call was held on May 26, 2005 between the Office claims examiner and the director of the Job Corps, Andrea Drozic. Ms. Drozic stated that appellant’s brother and several other students had knowingly left the center premises on the date in question to play football in a park approximately one half mile from the center. She also stated that the students knew that they were not supposed to go to the park and that their behavior was not condoned.

Appellant submitted a narrative statement dated June 21, 2005, contending that, prior to the decedent’s entry into the Job Corps, the family had been assured by a recruiter that the children would not be able to leave the center for 30 days after arrival and that they were to be supervised 24 hours per day.

On June 21, 2005 appellant requested a review of the written record.

Appellant submitted a copy of her brother’s Job Corps health questionnaire. A Significant Incident Report dated April 13, 2005 reflected that he underwent cardiac arrest and died on April 9, 2005 while playing football off-center with several other students. Witness statements from Rubeene Spence dated April 8, 2005, Tyree Williams dated April 9, 2005, and Jack A. Cauley, III dated April 8, 2005, corroborated that the enrollee collapsed during a football game. In a statement dated April 9, 2005, Louis Gracia indicated that the incident occurred while appellant’s brother and his friends were playing football “down at the police station.” An event summary dated April 9, 2005 and bearing an illegible signature reflected that he collapsed while playing football off-center, was taken away by ambulance and eventually died at Shady Side Hospital.

By decision dated October 31, 2005, an Office hearing representative affirmed the May 26, 2005 decision, on the grounds that the evidence failed to establish that the enrollee’s death occurred in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death, and full medical care, for civilian federal employees who suffer injury while in the performance of duty.¹ In order to ensure a comprehensive compensation system, Congress amended the Act periodically since 1916, to provide new compensation rights and² a wider range of coverage.³ Section 8143 of the Act provides that a member of the Job Corps shall not be considered to be in the performance of duty while absent from his assigned-duty post, except while participating in an activity authorized by or under the direction and supervision of the Job Corps.⁴

ANALYSIS

The Board finds that appellant's brother was not in the performance of duty at the time of his death on April 9, 2005, when he collapsed while playing football.

The Board has applied section 8143 of the Act to accomplish the purpose set forth by Congress. In the cases of *Antoinette B. Jensen*,⁵ *Jerry L. Ferrier*⁶ and *Everett Spaulding*,⁷ the Board found that the claimants were not in the performance of duty when sustaining injuries, due to the fact that the activities were not authorized by or under the direction of the Job Corps. In *Jensen*, the claimant was injured in an automobile accident following a period of time after she had worked her part-time job outside of the Job Corps, and after she had socialized with friends from that job. The Board noted that while the Job Corps had knowledge of the claimant's private part-time employment, it did not specifically authorize her absence from the premises on the night she was injured.⁸ In *Ferrier*, the claimant was injured in an automobile accident while enroute to town to purchase supplies for himself and other Job Corps enrollees.⁹ The Board noted that while the Job Corps had knowledge of his frequent trips into town for supplies and

¹ 5 U.S.C. § 8101 *et seq.*

² The Economic Opportunity Act of 1964, 78 Stat. 510, Pub. L. 88-452 (codified as 42 U.S.C. § 2716 (c)). *See Carlos Solana*, 45 ECAB 764 (1994).

³ Schedule awards under 5 U.S.C. § 8107, are an example of an additional form of compensation created by congressional amendments. Additional coverage for certain classes of beneficiaries under the Act were created by 5 U.S.C. §§ 8140 through 8144, and Subchapter III of the Act. *See Carlos Solana*, *supra* note 2.

⁴ 5 U.S.C. § 8143(a)(3).

⁵ 36 ECAB 558 (1985).

⁶ 34 ECAB 1278 (1983).

⁷ 34 ECAB 891 (1983).

⁸ *Id.*

⁹ *Jerry L. Ferrier*, *supra* note 12 at 1281.

recreation, it did not explicitly or implicitly authorize him to leave the premises of his assigned post or duty to purchase supplies on the date of his injury. In *Spaulding*, the decedent Job Corps enrollee was shot while talking with a fellow enrollee while on authorized leave with a pass.¹⁰ The Board held that the decedent was not in the performance of duty when shot, because even though the enrollees maintained a pass authorizing them to be at the home where the shooting occurred, the enrollees were not engaged in an activity authorized by or under the direction of the Job Corps.

In the present case, the enrollee collapsed, and subsequently died, while playing football approximately one half mile from the job center. Because he was off-premises, his activities would not be considered employment related, unless authorized by or under the direction and supervision of the Job Corps. The evidence of record establishes that the decedent's participation in the off-premises football game was not authorized or supervised by the Job Corps. There was no dispute that the incident occurred away from the center. The director of the Job Corps stated that the students knew they were not supposed to go to the park and that their behavior was not condoned. Under these circumstances, the Board finds that the decedent was not in the performance of duty at the time of his injury.

CONCLUSION

The Board finds that appellant has failed to establish that the decedent's death on April 9, 2005 occurred in the performance of duty.

¹⁰ *Everett Spaulding, supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 31 and May 26, 2005 are affirmed.

Issued: March 16, 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