



that he was off duty at the time of the accident as his normal working hours were from 8:00 a.m. to 4:00 p.m.

In support of his claim, appellant submitted a medical note from Dr. Oliver Achleitner, an orthopedic surgeon. He advised that appellant could return to light-duty work on November 29, 2004.

By letter dated January 5, 2005, the Office advised appellant that the submitted information was insufficient to establish his claim. The Office requested additional information. Appellant was provided 30 days to submit pertinent medical information.

The Office subsequently received documentation which included medical progress reports and physical therapy requests. In an October 5, 2004 hospital report, Dr. Achleitner reported that appellant lost control of his vehicle and struck a pole while leaving work. Appellant was diagnosed with a fracture dislocation of the right hip and a fractured posterior acetabulum. In an undated report, Dr. Achleitner opined, with a check mark "yes," that appellant's fractured acetabulum was caused or aggravated by the employment activity.

By decision dated February 14, 2005, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the injury arose out of and in the course of federal employment.

In an undated letter, appellant requested reconsideration. He argued that there was a general rule of workers' compensation law that, "as to employees having fixed hours and place of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from, before or after working hours or lunch time, are compensable." Appellant argued that the road which he traveled at the time of his accident was under the employing establishment's exclusive control. He also stated that he was providing a copy of a workers' compensation case and an October 5, 2004 memorandum by Eusebio Carrillo, a supervisory immigration enforcement agent; however, no such evidence is of record.

By decision dated January 13, 2006, the Office denied modification of its February 14, 2005 decision. It noted that its first decision "determined that the injury occurred two hours after the end of your scheduled tour and while you were off the clock."

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>1</sup> provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment. In the course of employment relates to the

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.*

elements of time, place or circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's business, at a place where he may reasonably be expected to be in connection with the employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.<sup>3</sup> The employee must also establish an injury arising out of employment. To arise out of employment, the injury must have a casual connection to the employment, either by precipitation, aggravation or acceleration.<sup>4</sup>

Under the Act, an injury sustained by an employee having fixed hours and place of work while going to or coming from work is generally not compensable because it does not occur in the performance of duty. However, many exceptions to the rule have been declared by the courts and workers' compensation agencies. One such exception almost universally recognized is the premises rule, an employee going to or coming from work before or after working hours or at lunch, while on the premises of the employer, is compensable.<sup>5</sup> This includes a reasonable interval before and after official working hours while the employee is on the premises engaging in preparatory or incidental acts. What constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and nature of the employment activity. The mere fact that an injury occurs on an industrial premises following a reasonable interval after working hours is not sufficient to bring the injury within the performance of duty. The concomitant requirement of an injury arising out of the employment must also be shown.<sup>6</sup> That is, some substantial employer benefit or an employer requirement must be shown in order to consider the activity involved to be arising out of employment.<sup>7</sup> It is incumbent upon appellant to establish that the injuries arose out of his employment; that is, the accident must be shown to have resulted from some risk incidental to the employment.<sup>8</sup>

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>9</sup> The Office is not a disinterested arbiter, however, but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.<sup>10</sup> While the claimant has the burden to establish entitlement to

---

<sup>3</sup> *Mona M. Tates*, 55 ECAB \_\_\_\_ (Docket No. 03-892, issued October 6, 2003); *Timothy K. Burns*, 44 ECAB 125 (1992).

<sup>4</sup> *John B. Shutack*, 54 ECAB 336 (2003); see also *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>5</sup> See *Emma Varnerin, M.D.*, 14 ECAB 253 (1963).

<sup>6</sup> *Narbik A. Karamian*, 40 ECAB 617 (1989).

<sup>7</sup> *Timothy K. Burns*, 44 ECAB 125 (1992).

<sup>8</sup> *Id.*

<sup>9</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>10</sup> *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

compensation, the Office shares responsibility in the development of the evidence.<sup>11</sup> It must obtain any evidence that is necessary for the adjudication of the case which is not received when the notice or claim is submitted. The Office is responsible for providing the claimant information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence and upon initial examination of the case should request all evidence necessary to adjudicate the case.<sup>12</sup>

### ANALYSIS

On his claim form, appellant indicated that the accident occurred on employing establishment premises on October 4, 2004 at approximately 6:00 p.m. He contends that he was on federal property at the time of the injury and the employing establishment has not disputed this. Therefore, appellant's injury was sustained while on the premises of the employing establishment.

However, the mere fact that the employee was on the premises at the time of injury is not sufficient to establish entitlement to compensation benefits.<sup>13</sup> It must also be established that appellant was engaged in activities which may be described as incidental to his employment, *i.e.*, that he was engaged in activities which fulfilled his employment duties or responsibilities or were incidental thereto. It is incumbent upon appellant to establish that it arose out of his employment; that is, the accident must be shown to have resulted from some risk incidental to the employment. In other words, some contributing or causal employment factor must be established.<sup>14</sup> Whether a particular case is or is not within the scope of the Act depends upon the general test of whether the particular risk may be said to be reasonably incidental to the employment, having in mind all relevant circumstances and the conditions under which the work is required to be performed.<sup>15</sup>

The record establishes that appellant's normal working hours were from 8:00 a.m. to 4:00 p.m. Appellant injured himself at 6:00 p.m., two hours after his tour of duty ended, while driving off the employing establishment premises. Board decisions in these types of cases evaluate what caused the time delay for an appellant's coming early or leaving late.<sup>16</sup> The Office's decisions in this case, however, fail to evaluate or analyze the time delay as a deficiency in the claim. Although the Office's January 13, 2006 decision states that the first decision "determined that the injury occurred ... off the clock," the February 14, 2005 decision made no

---

<sup>11</sup> *Mary A. Barnett (Frederick E. Barnett)*, 17 ECAB 187, 189 (1965).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).

<sup>13</sup> *See Charles Crawford*, 40 ECAB 474 (1989).

<sup>14</sup> *See Bernard Redmond*, 45 ECAB 298 (1994).

<sup>15</sup> *See Mary Beth Smith*, 47 ECAB 747 (1996) (where the employee, who left her office building to attend to her injured child located in another building on the employing establishment premises, was not engaged in the duties of her work with the employing establishment or in activities that can be characterized as reasonably incidental to her employment, when she sustained an injury while entering the building where her child was).

<sup>16</sup> *See William W. Knispel*, 56 ECAB \_\_\_\_ (Docket No. 05-674, issued July 25, 2005) and cases cited to therein.

reference to the time delay or the two-hour lapse. The Office's January 13, 2006 decision fails to make specific findings regarding the time delay. Furthermore, at no point did the Office put appellant on notice that he needed to establish why he was on the employing premises two hours after his tour of duty ended. The Office made no inquiry and no findings on the determinative issue of why appellant was on the premises of the employing establishment two hours after his tour of duty ended and whether he was engaged in any preparatory or incidental activity related to his employment.

The Office shares in the responsibility in the development of the evidence.<sup>17</sup> It is responsible for providing the claimant information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence and to request all evidence necessary to adjudicate the case.<sup>18</sup> The Board finds that the Office did not properly develop the factual evidence to make findings on the determinative issue. Accordingly, the case is not in posture for decision.

### CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the factual evidence is warranted.

---

<sup>17</sup> *Mary A. Barnett (Frederick E. Barnett)*, *supra* note 11.

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: October 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