United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 07-959**
	)	**Issued: August 2, 2007**
U.S. POSTAL SERVICE, POST OFFICE, St. Clairsville, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2007 appellant filed a timely appeal of the February 1, 2007 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant was in the performance of duty on February 6, 2006 when she was injured in an automobile accident.

FACTUAL HISTORY

On February 11, 2006 appellant, then a 30-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained multiple injuries in a motor vehicle accident on February 6, 2006. She stated that, at approximately 8:15 a.m., while she was on her way to work, she skidded off a slippery road into a ditch. After exiting her car to assist a person in another vehicle, appellant was struck by a third vehicle and pinned between two cars.

The employing establishment controverted the claim, contending that appellant was not in the performance of duty when injured.

Deborah Raffner, appellant's postmaster, stated in a February 28, 2006 letter that, on the date of injury, appellant was scheduled to work two hours in the office, where she was to attend a precount meeting and case mail. Although appellant used her privately-owned vehicle to deliver mail on an "as needed" basis, she was not scheduled to deliver mail on February 6, 2006 and, therefore, was not authorized to use her vehicle for work purposes on that date. Ms. Raffner explained that appellant was authorized to use her own vehicle to deliver mail only when she was covering for a carrier who was scheduled to be off duty and that she was always notified in advance of the route to be covered on those days. She stated that, on February 6, 2006, appellant was aware that she would not be delivering mail, that her vehicle would not be required for work and that she would not be compensated for mileage.

On March 7, 2006 the Office informed appellant that the information submitted was insufficient to establish her claim. Noting that she had provided no medical evidence, the Office advised her to submit an agency contract, a statement from her supervisor or other evidence establishing that she was paid during her period of transport to work on the date of injury.

The employing establishment submitted FECA Program Memorandum No. 104, dated October 24, 1969 regarding "Rural Letter Carriers Driving Their Own Vehicles." The memorandum indicated that a rural carrier is considered to be in the performance of duty while driving her own vehicle between her home and the post office and between the post office and her home, provided that the record shows that the employing establishment required her to furnish the vehicle for handling mail. In a letter dated March 23, 2006, the employing establishment stated that it did not require appellant to utilize her vehicle to perform her duties on February 6, 2006, as she was scheduled to attend a meeting and to case mail.

The record contains documents relating to an investigation of the February 6, 2006 accident, including an accident report; a copy of a summarization of postal the inspector's interview of appellant on March 24, 2006; a report of investigation dated March 27, 2006; a memorandum of activity from postal inspection services dated March 14, 2006; a memorandum of interview with Ms. Raffner, postmaster, dated March 13, 2006; and a March 28, 2006 letter from the postal inspector. Ms. Raffner reiterated that appellant was not scheduled to deliver mail on February 6, 2006, was not being reimbursed for mileage on that day and was not in a pay status at the time of the accident. The March 27, 2006 report of investigation concluded that appellant was not considered to be in the performance of her duties when injured on February 6, 2006. In her March 24, 2006 interview, she stated that on the date of the accident she was going to work to attend a precount meeting and to case mail for approximately two hours. She explained that she had received a telephone message from her employer to the effect that she would not be delivering mail on that day. Appellant alleged that management had previously told her that she should take her personal vehicle to work because she might be asked to deliver mail. She further claimed that she often "ended up" delivering mail on days when she was scheduled to case mail. Appellant indicated that, while she was scheduled to report to work at 8:30 a.m. on February 6, 2006, her start time was 7:30 a.m. on days when she delivered mail.

By decision dated April 12, 2006, the Office denied appellant's claim, finding that the claimed event occurred, but that there was no medical evidence providing a diagnosis that could be connected to the established event. On May 10, 2006 appellant, through her representative, requested an oral hearing.

Appellant submitted numerous medical reports related to the February 6, 2006 incident, including reports from Dr. J.D. Lechner, a treating physician, from February 6 through October 24, 2006; reports from Wheeling Hospital Center for Wounded Care for the period from April 12 through June 13, 2006; reports dated February 6 and 13, 2006 from Dr. Howard L. Shakelford, a treating physician; February 7 and 8, 2006 reports of x-rays of the chest, left shoulder and femur; and a July 25, 2006 report of a magnetic resonance imaging scan of the cervical spine.

At the November 21, 2006 hearing, appellant testified that the employing establishment does not pay her for the time she spends coming from and going to work. She stated, however, that she was told that she was "on work time" if she did not deviate from her route on her way home from work. Appellant denied having a written statement supporting her contention; however, she submitted an undated employing establishment article on carrier duties and responsibilities. The article indicated that rural carriers are protected under the Federal Employees' Compensation Act in the event they sustain an injury while in the performance of duty. Rural carriers are considered to be in the performance of duty when driving their own vehicles between their home and the post office and the post office and their home, provided that the records indicate that the employing establishment required the carrier to furnish the vehicle. Appellant stated that she was scheduled to attend a meeting at the employing establishment and to case mail on February 6, 2006. She testified that she was not driving to work for the purpose of delivering mail in her personal vehicle, but that she was required to have her vehicle at work, so that she would be ready to deliver mail if the need arose. Appellant stated that she had no way of knowing, prior to arriving at work, whether she would be needed to deliver mail. Her husband testified that, on the Friday before the accident, a representative of the employing establishment left a telephone message indicating that appellant was required to attend a precount meeting and to case mail on February 6, 2006, but that she would not be required to deliver mail. Appellant's representative argued that the employing establishment had the right to control the manner and means of her coming and going and, therefore, she was entitled to coverage under the Act.

By decision dated February 1, 2007, an Office hearing representative found the medical evidence sufficient to establish the medical component of the fact of injury. However, he affirmed the Office's denial of the claim, finding that appellant failed to establish that she sustained an injury in the performance of duty.

LEGAL PRECEDENT

The 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 or during a lunch period, 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]

The Board has recognized exceptions to this general "coming and going" rule, 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 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]

Office's procedure manual includes letter carriers in the first of four general classes of off-premises workers.[5] 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.[6]

It is a well-settled principle of workers' compensation law that where an employee, as part of his job, is required to bring with appellant her own car, truck or motorcycle for use during his working day, the trip to and from work is by that alone embraced within the course of employment.[7]

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[1] 5 U.S.C. § 8102(a).

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

[3] *See John M. Byrd*, 53 ECAB 684 (2002); *see also Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

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

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5a(1) (August 1992). *See David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006); *Donna K. Schuler*, 38 ECAB 273 (1986).

[6] *Thomas E. Keplinger*, 46 ECAB 699 (1995); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5b (August 1992).

[7] *Melvin Silver*, *supra* note 4.

ANALYSIS

In the present case, appellant left home on the morning of February 6, 2006 for the purpose of attending a precount meeting and casing mail at the employing establishment. The motor vehicle accident occurred off-premises at approximately 8:15 a.m. as she was driving to the employing establishment. As noted above, the general "coming and going" rule would preclude coverage under the Act for this injury, unless appellant establishes an applicable exception. 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. There is no indication that the employing establishment expressly or impliedly agreed that employment service should begin when appellant left home on February 6, 2006, nor any special inconvenience, hazard or urgency of travel that would bring it within coverage under the Act. The record does not establish that appellant was in a pay status at the time of injury or that she was reimbursed for travel to the general mail facility.[8]

Had appellant been required to furnish her vehicle for work purposes on February 6, 2006, then she may have been considered in the performance of duty when the accident occurred.[9] However, the evidence shows that she was not required to take her vehicle to work on that date. Appellant admittedly was informed by the employing establishment that she would be attending a meeting and casing, rather than delivering, mail. She was scheduled to begin working at 8:30 a.m., as opposed to her 7:30 a.m. start time on days when she delivered mail. Appellant alleged that she had no way of knowing, prior to arriving at work, whether she would be needed to deliver mail and that she was required to have her vehicle at work, so that she would be ready to deliver mail if the need arose. However, she provided no evidence to corroborate this allegation, which was controverted by the employing establishment. Appellant's representative argued that the employing establishment had the right to control the manner and means of appellant's coming and going and, therefore, she was entitled to coverage under the Act. On the contrary, on the date in question, appellant was not required to take her vehicle to work. Therefore, the employing establishment did not have any control over the manner and means of appellant's coming and going and she is not entitled to coverage under the Act for an injury that occurred on her way to work.

[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] *Melvin Silver*, *supra* note 4.

The Board finds that the evidence of record does not establish an applicable exception to the "coming and going" rule. Appellant was not in the performance of duty at the time of the motor vehicle accident on February 6, 2006 and the Office properly denied the claim.[10]

CONCLUSION

The Board finds that appellant was not in the performance of duty when injured on February 6, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2007 is affirmed.

Issued: August 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] *See Jon Louis Van Alstine*, 56 ECAB ___ (Docket No. 03-1600, issued November 1, 2004). (Finding that employment did not fall within any exception to the general rule, the Board denied coverage where appellant sustained an off-premises injury while riding his motorcycle to work). *See also Linda S. Jackson*, 49 ECAB 486 (1998).