

duty at the time of the alleged injury and the injury occurred at a facility at which appellant was no longer employed.

On June 28, 2005 the Office received medical documents consisting of appellant's triage assessment, emergency physician record and a work status report.

In a letter dated July 18, 2005, the Office informed appellant that further information was needed, specifically, evidence to support that appellant was injured while performing an employment duty. In response, appellant submitted emergency reports, a written statement describing the incident and a doctor's prescription¹ which stated that appellant was disabled and would not return to work for another month.

In an August 18, 2005 decision, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the injury arose out of and in the course of employment.

In a September 19, 2005 letter, appellant requested reconsideration. Accompanying his letter was a copy of his written statement describing the incident. Appellant stated that he came to the employing establishment to take an examination for a job for which he had applied. An investigative memorandum dated August 24, 2005 from the United States Postal Inspection Service with exhibits was also submitted to the Office.

By decision dated November 21, 2005, the Office found that the evidence submitted did not establish that the injury occurred in the performance of duty and affirmed the August 18, 2005 decision.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress 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 attach merely upon the existence of an employee/employer relation.² 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.³ In addressing this issue, the Board has stated in the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment or

¹ The signature is illegible.

² *Bruce A. Henderson*, 39 ECAB 692 (1988); *Minnie M. Huebner*, 2 ECAB 20 (1948).

³ *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

the risk is incidental to the employment or to the conditions under which the employment is performed.⁴

Under the Federal Employees' Compensation Act,⁵ 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. This is in accord with the weight of authority under workers' compensation statutes that such injuries do not occur in the course of employment. However, many exceptions to the rule have been declared by courts and workers' compensation agencies. One such exception almost universally recognized is the premises rule: an employee going to or coming from work is covered under workers' compensation while on the premises of the employer. This exception includes a reasonable interval before and after official working hours while the employee is on the premises engaging in preparatory or incidental acts.⁶ 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 employee must also show that the injury resulted from some risk incidental to the employment and that the employing establishment received some substantial benefit from the activity involved.⁷

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 Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was aimed at reaching some specific personal objective.⁸

⁴ *Barbara D. Heavener*, 53 ECAB 142 (2001); *Angela J. Burgess*, 53 ECAB 568 (2002).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Industrial Premises, Chapter 2.804.4a. (August 1992).

⁷ *Narbik A. Karamian*, 40 ECAB 617 (1989).

⁸ *Rebecca LeMaster*, 50 ECAB 254 (1999).

ANALYSIS

Appellant's injury did not occur at a time when one could reasonably say he was engaged in his employer's business. The alleged injury in this case occurred at an employing establishment facility. This factor alone is not sufficient to establish entitlement to benefits for compensation. The injury must have arisen out of and been in the course of employment. In order to arise out of employment, the facts must show some substantial employer benefit or requirement that gave rise to the injury.⁹

The Board finds that appellant was at the employing establishment facility solely for personal reasons. On the date of the injury, June 26, 2005, appellant was not scheduled for work. Additionally, he did not work at the facility where he was injured. Appellant was present at the facility to make an appointment with the Postal Employee Development Center to take an examination for a new position. The center was closed at the time appellant arrived. Appellant states that he was not directed by his supervisor to go to the facility. He did not have an appointment, did not call ahead of time and was stopping by the facility because he lived close by. Appellant was not at the facility to perform his employment duties nor was he required to be there. Thus, his activity at the facility was a personal errand and not a requirement of his employment.¹⁰

The Board finds that appellant's injury did not arise in the course of his employment. In the absence of time and place, the burden of establishing work connection rests solely with activity. There is no evidence that the employing establishment expressly or impliedly required appellant's presence at the time of the injury. Appellant's activity at the time of the injury was not required as a condition of his employment, nor was he involved in any preparatory activity reasonably incidental to his employment activities as he was not scheduled to work at that time or place.

CONCLUSION

The Board finds that appellant has not established that he sustained injury on June 26, 2005 arising in the course of his federal employment.

⁹ *Catherine Callen*, 47 ECAB 192 (1995).

¹⁰ *Paula G. Johnson*, 53 ECAB 722 (2002) (the claimant was injured while at the employing establishment on her scheduled day off to remove plants from her office, a personal errand unrelated to her work duties).

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 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