

Appellant's supervisor stated that appellant was not in the performance of duty at the time of her injury as she was traveling to attend a union meeting regarding the internal business of the labor organization.

The employing establishment further disputed appellant's claim on April 15, 2005. It noted that appellant, a union steward, was traveling to participate in a Union Executive Board meeting held approximately six miles from her duty station. The employing establishment stated that the purpose of the meeting was to engage in the internal business of the labor organization.

In a letter dated June 1, 2005, the Office requested additional information from appellant and the employing establishment and allowed 30 days for a response. The employing establishment responded on June 22, 2005 and stated that appellant was in regular duty status on April 8, 2005 at the time of her injury and was driving her own vehicle. The employing establishment stated that appellant was not on her way to handle a grievance or complaint and was not at the meeting to participate in any representational capacity. Therefore, she was not on official time. Appellant's supervisor stated that appellant attended these meetings on a monthly basis and that appellant's time card reflected a regular pay status at the time of the incident on April 8, 2005.

By decision dated July 7, 2005, the Office denied appellant's claim finding that she had not established that she was in the performance of duty at the time of the April 8, 2005 incident. The Office noted that appellant had not submitted any evidence supporting that she was on official time at the time of her injury.

Appellant requested reconsideration on October 6, 2005 and stated that as chief steward she was entitled to four hours of official time per day. Appellant stated that her time cards reflected this status. She submitted a copy of the contract containing this statement as well as a listing of officers including her as the chief steward.

The employing establishment responded on November 7, 2005. It agreed that appellant was the chief steward and was entitled to four hours of official time when appropriate. However, appellant was not in official time status at the time of her injury as she was traveling to a meeting that involved only internal union business and was held purely for union activities only. The employing establishment stated that, under the bargaining agreement, official time was to be granted for purposes of handling grievances, complaints and representational functions and appropriate lobbying functions.

By decision dated November 16, 2005, the Office denied appellant's claim finding that, as she was not engaged in any representational function, she was not entitled to official time and not in the performance of duty at the time of her injury.

Appellant filed a notice of recurrence of disability on April 10, 2006 alleging that she sustained a recurrence of total disability on April 5, 2006 due to her April 8, 2005 employment injury. By letter dated April 28, 2006, the Office informed appellant that no action could be taken on her recurrence claim and that she must follow the appeal rights accompanying the November 16, 2005 decision.

In a letter dated July 13, 2006, appellant requested reconsideration and stated that the meetings in the past had been charged to representational time and official time was now being used for these meetings. She stated that union officials preformed “case preparation” at the meetings. Appellant submitted a series of emails between the executive vice president of the union, Keith Watson, and the employing establishment. Mr. Watson stated that these meetings were not on official time, but “representation” time. He stated that at the meeting the union officials worked on case preparation, analysis, briefing and planning. Mr. Watson further stated: “In part our meetings are no different than meetings the Director may have with his staff over all concerns within the medical system including working conditions, employee problems and solutions and representation strategies as well as case development and preparation for all types of adjudications.” Appellant also noted in the past these meetings have never been charged to official time, that she had never used annual leave to attend the meetings and that the meetings were covered on her time and leave statements as regular duty status. Appellant noted that she was required to travel to these meetings on a weekly basis.

By decision dated August 22, 2006, the Office denied appellant’s claim finding that her injury did not occur in the performance of duty.

LEGAL PRECEDENT

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relationship.¹ Instead, Congress provided for the payment of compensation for personal injuries sustained while in the performance of duty. The phrase “while in the performance of duty” has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.” 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 or her master’s business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.”

The Board has recognized as a general rule that off-premises injuries sustained by employees having fixed hours and place of work while going to or coming from work, are not compensable.² An exception to this rule applies where the employee uses the highway to do something incident to his employment, with the knowledge and approval of the employer.³

¹ *Janet M. Abner*, 53 ECAB 275, 277-78 (2002).

² *Phyllis A. Sjoberg*, 57 ECAB ____ (Docket No. 06-114, issued February 8, 2006).

³ *Dennis L. Forsgren (Linda N. Forsgren)* 53 ECAB 174, 180 (2001); *Mary Margaret Grant*, 48 ECAB 696, 703 (1997).

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.⁴

With respect to whether injuries arising in the course of union activities are related to the employment, the general rule is that union activities are personal, that attendance at a union meeting, for example, is exclusively for the personal benefit of the employee and devoid of any mutual employer-employee benefit.⁵ Under the procedure manual, the Office has recognized that certain representational functions performed by employee representatives benefit both the employee and the employing establishment.⁶ With regard to representational functions and when a person is considered to be on official time, the Office's procedure manual provides:

“When an employee claims to have been injury while performing representational functions, an inquiry should be made to the official superior to determine whether the employee had been granted ‘official time’ or in emergency cases, would have been granted official time if there had been time to request it. If so, the claimant should be considered to have been in the performance of duty.”⁷

ANALYSIS

Appellant is an employee with fixed hours and place of work. At the time of injury, she was in transit to a weekly union meeting in her personal vehicle during her regular duty hours when she was injured. Her injury did not occur at a time when she was reasonably considered to be engaged in her employment. Appellant's injury did not occur at a place that she could reasonably be expected to be in connection with her employment. She was not on the employing establishment premises at the time of the injury. However, appellant argues that as she was using the highway to do something incidental to her employment with the knowledge and approval of the employer, *i.e.*, attending a regularly scheduled union meeting for which she was compensated she was in the performance of duty. Appellant also argued that, although she was not on “official time,” her attendance at the meeting was in a representational capacity.

As appellant was not on the premises at the time of the injury, but instead left her work premises on the way to a meeting at the time of the injury, the Board must focus on the nature of the activity engaged in by appellant to determine whether or not it is reasonably incidental to her employment or whether she was engaged in personal activities unrelated to her employment. As described in the record, the union meeting which appellant planned to attend was for the personal benefit of the employee as a union officer rather than as in her representational capacity as union steward with a mutual benefit to the union and her employer. There is no evidence in the record

⁴ *Sjoberg, supra* note 2.

⁵ *Kelly Y. Simpson*, 57 ECAB ____ (Docket No. 04-1809, issued October 26, 2005).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.16 (July 1997).

⁷ *Id.*

that appellant planned to engage in her specific representative functions on April 8, 2005. Instead based on the email from Mr. Watson, union vice president, appellant and other union officials engaged in more general discussions regarding how the union could best serve its clientele. Appellant did not submit evidence to establish that any matters on which she met pertained to a representational function. As such, the Board cannot find that appellant was acting in a representational capacity at the time of her injury. Therefore, the union meeting must be considered a personal activity unrelated to appellant's employment.

Appellant's supervisor and appellant both note that based on her union position she was entitled to use up to four hours a day of official time. However, both agree that her time sheet did not reflect that she was on official time at the time of injury and that appellant was in a regular duty status when her injury occurred. As appellant was not on official time, her union activity can reasonably be considered to be personal rather than representational and her injury, therefore, did not occur in the performance of duty.

Appellant was not in a place she could reasonably be expected to be in furtherance of her employer's business. She has not established that she was performing something incidental to that business rather than a personal errand unrelated to her job duties or her representational status as a union steward. Her injury on April 8, 2005 did not occur in the performance of duty. The Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant's April 8, 2005 injury did not occur in the performance of duty. The Office properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2006 and November 16, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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