United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-1731**
	)	**Issued: April 7, 2008**
U.S. POSTAL SERVICE, PEMBROKE PINES PARCEL & DISTRIBUTION CENTER, Pembroke Pines, FL, Employer	)	

Appearances:
Dean T. Albrecht, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2007 appellant filed an appeal of November 27, 2006 and April 19, 2007 decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 appellant has established that he sustained a fractured right femur in the performance of duty.

FACTUAL HISTORY

On September 22, 2005 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) asserting that on August 25, 2005 at 6:15 p.m. while driving home

from work.[1] He sustained a right femur fracture in a motor vehicle collision on a public road in Broward County during Hurricane Katrina. The other vehicle involved in the impact was driven by a private citizen. Jocelyn King, an employing establishment supervisor, noted that appellant's regular work hours were weekdays from 4:00 p.m. to 12:30 a.m. Ms. King contended that appellant was not in the performance of duty at the time of the accident as he "was traveling in his personal vehicle on his way home, not traveling for [work] purposes" and not on the employing establishment's premises.

Timekeeping records show that on August 25, 2005 appellant clocked in shortly before 3:00 p.m. and clocked out at 6:01 p.m. A hurricane warning was in effect from 8:00 a.m. onward. Workers were instructed to use leave if they left before 6:00 p.m. After the accident, the employing establishment granted appellant administrative leave from 6:01 p.m. on August 25, 2005 through 12:30 a.m. on August 26, 2005.

In a September 21, 2005 letter, appellant explained that he was instructed to report for duty at 3:00 p.m. despite the hurricane warning. At 4:00 p.m., a supervisor advised that he could go home and use leave for the remainder of his tour. Appellant chose to remain until 6:00 p.m. so he would not need to use leave. At approximately 6:20 p.m., he was involved in the automobile accident.

In October 13, 2005 letters, Supervisors Christina Villanueva and Sam Ezem stated that no employees were forced to perform emergency duties on August 25, 2005 and that appellant voluntarily remained at work until 6:00 p.m.

In an October 26, 2005 letter, the Office advised appellant of the additional factual and medical evidence needed to establish his claim. The Office explained the Federal Employees' Compensation Act's restrictions regarding injuries occurring while going to or coming from work. The Office afforded appellant 30 days in which to submit such evidence.

In a November 4, 2005 letter, the employing establishment noted that appellant worked voluntary overtime on August 25, 2005 and that he was not required to drive for this employment.

In a November 16, 2005 letter, appellant asserted that his claim fell under coverage of the Act as he was required to travel during a curfew and was in pay status at the time of the accident.

By decision dated December 5, 2005, the Office denied appellant's claim on the grounds that the claimed injury did not occur in the performance of duty. The Office found that appellant's drive home on August 25, 2005 did not fall under any exception that would bring the injury within the performance of duty. The Office noted that appellant did not establish that there was a curfew in effect at the time he drove home on August 25, 2005. The Office stated that weather conditions were dangers inherent to the motoring public and did not constitute a special hazard exception.

[1] A municipal police accident report lists the time of the accident as 6:35 p.m. on August 25, 2005. The report noted that appellant was charged with careless driving for failing to stop at an intersection. The charge was dismissed on November 8, 2005 by a Broward County court.

In a December 19, 2005 letter, appellant requested an oral hearing, which was held on September 22, 2006. At the hearing, appellant stated that on August 25, 2005 he was assigned the emergency duty of moving mail from the loading dock to an inside area to protect it from the hurricane. He submitted a September 13, 2006 statement from Juan Padilla, a coworker, asserting that on August 25, 2005, Ms. Villanueva instructed some employees to work until 6:00 p.m.

By decision dated and finalized November 27, 2006, the Office hearing representative found that appellant was not in the performance of duty at the time of the August 25, 2005 motor vehicle accident. Appellant was not paid or reimbursed for his travel from work to home, there was no special hazard at the accident site and weather conditions were inherent to the motoring public.

In a January 24, 2007 letter, appellant requested reconsideration. He submitted coworker statements that he was not at an August 25, 2005 safety meeting. In a March 9, 2007 letter, the employing establishment contended that on August 25, 2005 employees were instructed to leave work at any time and that appellant did not perform emergency duties.

By decision dated April 19, 2007, the Office denied modification on the grounds that the evidence submitted did not establish that he sustained an injury in the performance of duty. The Office found that appellant's drive home was personal in nature, unrelated to his employment. The Office further found that appellant had not established an exception under the special hazards doctrine.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his or her claim. These elements include the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty[3] as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every

[2] 5 U.S.C. §§ 8101-8193.

[3] The term "while in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation of "arising out of and in the course of employment." The phrase "in the course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. *Robert W. Walulis*, 51 ECAB 122 (1999). This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefit is derived or an employment requirement gave rise to the injury. *Cheryl Bowman*, 51 ECAB 519 (2000); *Charles Crawford*, 40 ECAB 474 (1989).

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

Regarding performance of duty, 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, are not compensable as they do not arise out of and in the course of employment. Such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[6] Certain exceptions to this rule have developed where the hazards of the travel are dependent on particular situations: "(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 call as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer."[7]

Professor Larson, in his treatise on workers' compensation, notes that coverage is usually afforded in cases "involving a deliberate and substantial payment for the expense of travel, or the provision of an automobile under the employee's control."[8] However, under most circumstances, the travel must be sufficiently important in itself to be regarded as part of the service performed and therefore within the performance of the employee's duties.[9] The Office's procedures also provide an exception for employees required to travel during a curfew established by local, municipal, county or state authorities because of civil disturbances or for other reasons.[10]

ANALYSIS

Appellant was injured in a motor vehicle accident at approximately 6:15 p.m. on August 25, 2005 while driving home from work on public roads. He had clocked out from work, left his duty station and was not on the employing establishment premises. Generally, an injury

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Mary Kokich*, 52 ECAB 239 (2001); *Eileen R. Gibbons*, 52 ECAB 209 (2001).

[7] *Dennis L. Forsgren (Linda N. Forsgren)*, 53 ECAB 174 (2001); *Gabe Brooks*, 51 ECAB 184 (1999); *see Mary Margaret Grant*, 48 ECAB 969 (1997); *see generally* A. Larson, *The Law of Workers' Compensation* § 13.01 (2000) (explaining the "coming and going" rule).

[8] Larson, *supra* note 7 at § 14.07(1) (2000); *see also Mary Margaret Grant*, *supra* note 7.

[9] Larson, *supra* note 7 at § 14.07(3).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6(f) (August 1992). In such cases, "the official superior should be requested to submit: (a) the reason the employee was requested to report for duty; (b) whether other employees were given administrative leave because of the curfew; and (c) whether the injury resulted from a specific hazard caused by the imposition of the curfew, such as an attack by rioting citizens."

occurring on such a commute would not be covered under the Act.[11] Also, conditions common to all travelers, such as weather events, do not constitute a special hazard.[12]

Appellant contended that the August 25, 2005 injuries should be covered under the Act as he was required to travel during a municipal curfew. He submitted emergency bulletins but there was no documentation of a municipal curfew at the time of the August 25, 2005 accident. Appellant submitted no evidence establishing that his drive home was a requirement of his employment. Therefore, he has not established an exception to the coming and going rule in this regard.

Appellant also asserted that his injury should be covered under the Act as he was on administrative leave at the time of the August 25, 2005 accident. However, the Board finds that the grant of administrative leave was not equivalent to being in pay status and was not intended to reimburse commuting expenses.[13] Therefore, the administrative leave did not bring the accident under coverage of the Act.

Appellant also asserted that the August 25, 2005 accident occurred in the performance of duty as he was returning from emergency duties. However, the employing establishment stated that appellant did not perform emergency duties on August 25, 2005. The Board therefore finds that appellant has not established that he performed emergency duties on August 25, 2005.[14]

Appellant has not established that the August 25, 2005 right femur fracture occurred in the performance of duty. He established no exception to the coming and going rule.

CONCLUSION

The Board finds that appellant has not established that he sustained a right femur fracture in the performance of duty.

[11] *See Jimmie Brooks*, 54 ECAB 248 (2002). *See also Jon Louis Van Alstine*, 56 ECAB 136 (2004).

[12] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

[13] *Dennis L. Forsgren (Linda N. Forsgren), supra* note 7.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6(d) (August 1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 19, 2007 and November 27, 2006 are affirmed.

Issued: April 7, 2008
Washington, DC

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

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

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