United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
	)	
and	)	**Docket No. 07-1763**
	)	**Issued: April 22, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pocono Lake, PA, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 14, 2007 merit decision denying her claim for an employment-related February 13, 2006 injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on February 13, 2006.

FACTUAL HISTORY

On February 13, 2006 appellant, then a 56-year-old mail carrier, filed a claim alleging that at 6:45 a.m. on that date she sustained a "head injury" and "bruised body" when she slipped on ice while putting salt down. Her regular hours were 7:00 a.m. to 3:30 p.m. Her supervisor stated on the reverse of the claim form, "Employee was not on the clock and not authorized to salt parking lot." On the front of the form, Rudy Marinacci, the manager of customer service,

stated that he observed appellant shoveling snow before she fell and indicated that she "was not instructed to do this." Mr. Marinacci stated that he told appellant to stop shoveling and that she fell as she turned towards him.[1]

In a March 24, 2006 statement, appellant indicated that she was a safety officer for her station and asserted that on February 13, 2006 she placed some salt on the slippery parking lot because she knew that the "maintenance guy was out sick." Appellant submitted several reports of attending physicians, including reports of Dr. Michael Alexiades, a Board-certified orthopedic surgeon, who indicated that a right hip intertrochanteric fracture needed to be ruled out.

In a February 17, 2006 statement, Bobbie Solomon, an injury compensation specialist, indicated that appellant was not on the clock when she was shoveling and salting the snow. She stated: "This is not part of her job nor was she in the performance of her letter carrier duties. She fell on the ice while doing something she [was] not asked or authorized to do."

In a March 31, 2006 decision, the Office denied appellant's claim on the grounds that she did not show that her claimed February 13, 2006 injury occurred in the performance of duty. The Office determined that appellant was not injured in the performance of duty because she was off the clock at the time of her fall and was not performing her letter carrier duties or something incidental to her duties.

Appellant requested reconsideration of the Office's March 31, 2006 decision. In a March 14, 2007 statement, appellant's counsel argued that she was in the performance of duty when she fell on February 13, 2006 because, as a safety officer for her workplace, her actions of salting and shoveling were incidental to her employment. He claimed that appellant provided a substantial benefit to her employer by increasing the safety of the workplace for all employees. Appellant submitted additional medical evidence including a January 4, 2007 report in which Dr. Alexiades stated that she sustained a traumatic contusion to the right trochanteric region resulting in acute traumatic bursitis due to the February 13, 2006 fall. He indicated that appellant might have sustained a closed head or brain injury as a result of the fall, but recommended that she see a neurologist to evaluate this matter.

In an April 27, 2007 statement, Mr. Marinacci stated that appellant was the safety captain for the employing establishment. He asserted that the role of a safety captain was to observe the employing establishment and fill out a safety checklist each day and report any unsafe conditions. He indicated that safety captains may also assist in filing PS Forms 1767 for reporting a hazard or unsafe condition or practice. Mr. Marinacci stated that the duties of the safety captain do not include rectifying unsafe conditions beyond reporting them to management. He indicated that nobody asked appellant to salt or shovel on February 13, 2006. On April 30, 2007 Ms. Solomon stated that appellant's duties did not include shoveling or salting and that she was not asked to perform such actions on February 13, 2006.

[1] The record also contains a similar statement of Mr. Marinacci, dated February 17, 2006. He indicated that appellant fell at the foot of the stairs leading to the loading dock

In a May 14, 2007 decision, the Office affirmed its March 31, 2006 decision. The Office determined that appellant was not performing her duties or activities reasonably incidental to her duties when she fell on February 13, 2006.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] 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."[3] In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.[4] 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."[5] The phrase "course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. In addressing this issue, the Board has stated the following:

> "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."[6]

The Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts and what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee's activity.[7] This alone is not sufficient to establish entitlement to compensation. The employee must establish the concurrent requirement of an injury "arising out of the employment." "Arising out of employment" requires that a factor of employment caused the injury. It is incumbent upon the

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

[4] *Julian C. Tucker*, 38 ECAB 271, 272 (1986).

[5] *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[6] *Mary Keszler*, 38 ECAB 735, 739 (1987).

[7] *See Venicee Howell*, 48 ECAB 414 (1997); *Narbik A. Karamian*, 40 ECAB 617 (1989). In the cases concerning what constitutes a reasonable interval before or after work, the Board has been influenced by the activities engaged in by the employees before or after work. In *Venicee Howell*, the Board found coverage when the employee was injured five minutes after work while performing the incidental task of submitting a job bid. However, in *Arthur A. Reid*, 44 ECAB 979 (1993), the Board denied coverage when the employee was injured 45 minutes after work while engaging in a private conversation.

employee to establish that the claimed injury arose out of his or her 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.[8]

The Board has found that some actions are not job duties but are sufficiently related to such duties or specific instructions to be considered incidental to the employment.[9] In his treatise on workers' compensation, Professor Larson indicates that, if the ultimate effect of the employee's helping others is to advance her employer's work by removing obstacles or otherwise, it should not matter whether the immediate beneficiary of the helpful activity is a coemployee, independent contractor, employee of another employer or a complete stranger. Professor Larson described several cases where coverage was found when employees were injured while attempting to rectify unsafe conditions.[10] In other cases, the Board's denial of coverage has been at least partially due to the seemingly personal nature of the employee's actions.[11]

ANALYSIS

The Board finds that the evidence establishes that an employment incident occurred on February 13, 2006 while appellant was in the performance of duty. The case will be remanded to the Office to determine whether an employment injury occurred as a result of this accepted employment incident.

Appellant fell while she was shoveling snow and putting down salt at the foot of the steps leading to the employing establishment's loading dock. The employing establishment has not contested that the fall occurred on the premises. However, the fall occurred 15 minutes before appellant's usual starting time and she had not clocked in for the day. Appellant claimed that she was doing something incidental to her employment because she was the safety officer for the employing establishment and knew that the maintenance worker had called in sick. It is not contested that appellant's duties did not include shoveling or salting and that no employing establishment official asked her to perform such actions on that day.

The Board finds that appellant's actions on February 13, 2006 were reasonably incidental to her job and the employing establishment's mission. Appellant had a safety purpose for her actions and she was the safety captain at the employing establishment. As noted by Professor Larson, if the ultimate effect of the employee's helping others is to advance her employer's work

[8] *See Venicee Howell, supra* note 7.

[9] *See Maryann Battista,* 50 ECAB 343 (1999) (finding that delivering signs and a bad check list and checking on a customer's telephone request, while not the claimant's job duties, were reasonably incidental to her job duties); *Venicee Howell, supra* note 7 (finding that submitting a job bid, while not one of the claimant's job duties, was reasonably incidental to the her job duties).

[10] *See* A. Larson, *The Law of Workers' Compensation,* § 27.02 (2008).

[11] *See Margaret Gonzalez,* 41 ECAB 748, 751-54 (1990) (finding that pushing a coworker's vehicle after the end of a workday was not related to the claimant's reasonable fulfillment of her employment duties or of something incidental thereto); *Narbik A. Karamian,* 40 ECAB 617, 618-20 (1989) (finding that changing a tire after the end of a workday was not related to the claimant's reasonable fulfillment of his employment duties or of something incidental thereto).

by removing obstacles or otherwise, it should not matter who is the immediate beneficiary of the helpful activity.[12] Appellant's shoveling and salting at the foot of the steps leading to the employing establishment's loading dock helped to remove an obstacle which could have caused injury to whoever passed through that area. Although the employing establishment asserted that her role as a safety captain was designed to only report of unsafe conditions and not rectify them, it was not unreasonable for appellant to address a condition which posed an imminent threat to the safety of herself and her coworkers. The record reflects that the usual maintenance person did not come into work that day. Appellant's actions on February 13, 2006 are not analogous to those cases where the Board's denial of coverage was due to the personal nature of the employee's actions.[13] For these reasons, her choice to engage in shoveling and salting should be considered actions which are not job duties but are sufficiently related to such duties or specific instructions to be considered incidental to the employment.[14]

The Board notes that the February 13, 2006 fall occurred before appellant's regular starting time and before she clocked in for work. As noted, however, the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged 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 the nature of the employee's activity.[15] Appellant's accident on February 13, 2006 occurred about 15 minutes before the usual time that she clocked in. The Board finds that, under the circumstances of the present case, particularly given the fact that her actions were incidental to her employment, her injury occurred within a reasonable interval before she started work.[16]

For these reasons, appellant has established the existence of an employment incident while she was in the performance of duty on February 13, 2006. She submitted a January 4, 2007 report in which Dr. Alexiades, a Board-certified orthopedic surgeon, addresses a traumatic contusion to the right trochanteric region resulting in acute traumatic bursitis due to the February 13, 2006 fall. Dr. Alexiades indicated that appellant might have sustained a closed head or brain injury as a result of the fall, but recommended that she see a neurologist to evaluate this matter. The Board finds that, under these circumstances, the case should be remanded to the Office for further development of the medical evidence. After such development it deems necessary, the Office should issue an appropriate decision on this matter.

[12] *See supra* note 10 and accompanying text.

[13] *See supra* note 11 and accompanying text.

[14] *See supra* note 9 and accompanying text.

[15] *See supra* note 7 and accompanying text.

[16] The Board notes that the relevant facts of appellant's case are more similar to the facts of *Venicee Howell* than to the facts of *Arthur A. Reid. See supra* note 7.

CONCLUSION

The Board finds that the evidence establishes that an employment incident occurred on February 13, 2006 while appellant was in the performance of duty. The case will be remanded to the Office to determine whether an employment injury occurred as a result of this accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 14, 2007 decision is modified to reflect that the evidence establishes that an employment incident occurred on February 13, 2006 while appellant was in the performance of duty. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 22, 2008
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