United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 08-84**
	)	**Issued: April 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Cedar Hill, TX, 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 October 9, 2007 appellant timely appealed the July 2, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant's July 3, 2006 injuries were caused by his own willful misconduct.

FACTUAL HISTORY

Appellant, a 32-year-old former rural carrier, was involved in a motor vehicle accident on July 3, 2006. He stated that he was out delivering mail when a lady pulled out in the street. Appellant "tried to avoid her and swerved and hit a street sign." He described his injuries as a sprained left ankle and "road rashes" on the right side of his body. The employing establishment alleged that appellant's injuries were due to his own willful misconduct. At the time of the incident, appellant was operating a long-life vehicle (LLV), which featured a right-side driver's position. The employing establishment indicated that appellant was driving 45 miles per hour

with his seat belt unfastened and the driver-side door open. Operating the vehicle with the door open and the seat belt unfastened was contrary to the driver orientation training appellant received in October 2004. The employing establishment also noted that State law required the use of safety belts.

The police report indicated that appellant was traveling south approaching a four-way intersection when he noticed another motorist traveling east. The other motorist was at a stop sign and appellant had the right-of-way. The reporting officer indicated that appellant said he thought the car was rolling in front of him. According to the report, appellant began skidding 50 feet from the intersection and left the roadway, striking a sign post at the southeast corner of the intersection. Upon impact, he was ejected 16 feet from the vehicle. The police report also noted that appellant was not wearing a seat belt and was operating the vehicle with the right-side door open. The investigating officer identified driver inattention as the sole contributing factor.[1] Appellant was transported by ambulance to a nearby hospital.

Appellant's diagnoses included left ankle sprain and multiple abrasions. There were also reports of a possible fracture and ligament damage in the left ankle and foot. Several months after the July 3, 2006 incident, appellant was diagnosed with post-traumatic stress disorder, secondary to traumatic work-related injury.

In a decision dated September 14, 2006, the Office denied appellant's claim. The Office found that appellant had violated safety standards and rules, which constituted "negligence." Because of his negligence, appellant's injury was not considered to be causally related to factors of his employment.

On November 2, 2006 appellant requested reconsideration. The Office subsequently reopened the claim for further development. The employing establishment provided additional information regarding the safety training appellant received, including excerpts from the standard operating procedures for motor vehicles.

By decision dated July 2, 2007, the Office denied appellant's claim because his injury occurred due to willful misconduct. The Office found that appellant had violated employee safety rules as well as State law when he operated the LLV with his seat belt unfastened. Additionally, the Office noted that appellant had been driving with the door open.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is "caused by willful misconduct of the employee."[2]

[1] The police report did not corroborate the employing establishment's assertion that appellant was driving 45 miles per hour when the accident occurred.

[2] 5 U.S.C. § 8102(a)(1) (2000).

Willful misconduct is deliberate conduct involving premeditation, obstinacy or intentional wrongdoing with the knowledge that it is likely to result in serious injury.[3] Willful misconduct is also characterized as conduct which is in wanton or reckless disregard of probable injurious consequences.[4] Because it is an affirmative defense, the party that raises the issue of willful misconduct bears the burden of proof.[5]

ANALYSIS

When the July 3, 2006 motor vehicle accident occurred appellant was delivering mail on the route he had recently been assigned. Although he was performing his assigned duties when he was injured, the Office denied coverage under the Act because his July 3, 2006 injuries were purportedly caused by his own willful misconduct.

At the time of the July 3, 2006 motor vehicle accident, the employing establishment had standard operation procedures in effect that prohibited operating an LLV with an unfastened seat belt. Appellant was similarly prohibited from entering an intersection with the driver-side LLV door open. He received appropriate training and admittedly violated both safety requirements. However, appellant's failure to wear a seat belt and his operation of the LLV with the right-side door open did not cause the July 3, 2006 motor vehicle accident. He lost control of the LLV when he swerved to avoid a collision with another motorist. The investigating police officer attributed the motor vehicle accident to driver inattention. No additional contributing factors were noted.

There is no proof that the two safety infractions had any bearing on the evasive maneuver appellant attempted at approximately 5:15 p.m. on July 3, 2006. Had appellant operated the LLV in the prescribed manner, he quite possibly could have minimized the extent of his injuries. But doing so would not have prevented a near-collision with another motorist. In order to deny coverage, the Act requires that the employee's willful misconduct must have "caused" the injury.[6] The defense of willful misconduct does not come into play unless there was a causal connection between the violation and the injury.[7] A cause and effect relationship has not been established in the present case. Accordingly, the Board finds that appellant's purported willful misconduct did not directly cause the July 3, 2006 motor vehicle accident.

The Board further finds that appellant's actions did not rise to the level of willful misconduct. Operating the LLV without a seat belt and entering the intersection with the vehicle's right-side door open were lapses of judgment, not acts of wanton or reckless disregard of probable injurious consequences.[8] Appellant explained that his seat belt was off and the right-

[3] *James P. Schilling*, 54 ECAB 641, 647 (2003); *Karen Cepec*, 52 ECAB 156, 159 (2000).

[4] *James P. Schilling*, *supra* note 3.

[5] *Id.*

[6] 5 U.S.C. § 8102(a)(1).

[7] 2 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 35.01, at 35-4 (2000).

[8] *Id.* at § 34.02.

side door open because he was preparing for his next curbside delivery. He informed the Office that he was about a block away from entering a residential area. There is no evidence of premeditation, obstinacy or intentional wrongdoing. Also, there is no proof that appellant knew his behavior was likely to result in serious injury. The record does not support a finding that appellant's July 3, 2006 injuries were caused by his own willful misconduct. Accordingly, his claim is not precluded under 5 U.S.C. § 8102(a)(1). The case will be remanded to the Office for further consideration of appellant's July 14, 2006 traumatic injury claim.

CONCLUSION

The record does not establish that appellant's July 3, 2006 injuries were caused by his own willful misconduct.

ORDER

IT IS HEREBY ORDERED THAT that the July 2, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: April 23, 2008
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