United States Department of Labor
Employees' Compensation Appeals Board

W.O., Appellant	)	
and	)	**Docket No. 07-1528**
	)	**Issued: January 3, 2008**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
Appellant, pro se
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 May 16, 2007 appellant filed a timely appeal from an April 13, 2007 Office of Workers' Compensation Programs hearing representative's decision and an August 18, 2006 merit decision which denied his claim. Under 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 an injury to his left knee in the performance of duty.

FACTUAL HISTORY

Appellant, a 53-year-old welder, filed a Form CA-1 claim for benefits on June 14, 2006, alleging that he slipped on some oil and fell to the floor on March 7, 2006 at 6:20 a.m. while in the performance of duty, resulting in an injury to his left knee.

In a statement received by the Office on August 11, 2006, appellant stated:

> "I was walking down a hallway in build[ing] 460 with very poor lighting on the way back from the men's room to my office. New lighting was being installed the next day as a safety issue….
>
> "I had gotten to work early as that is what time the [bus] gets me here every day. I had gone to the men's room and was returning to my office. The accident occurred at 6:20 a.m….
>
> "When I came around the corner into the dark part of the hallway I did not see a puddle of oil someone had spilled on the floor. When I stepped in it I fell on [the] hallway floor twisting my left knee.
>
> "I am including a copy of my mishap safety report from my supervisor … Dave Segal. Right after this happened the shop 26 welder supervisor (Mr. Fletcher) saw me laying on the floor and helped me up and cleaned up the oil spill. I have no way to contact him as he is on a different shift."

Appellant's supervisor, Mr. Segal, submitted an accident report describing the March 7, 2007 work incident. He stated:

> "Employee was walking in hallway and slipped and fell down in a puddle of oil that had been spilled. The container was still there. It was a toolroom oil bottle. The employee did not see the bottle or the puddle of oil because it was dark in that part of the hallway."

In a memorandum dated August 16, 2006, the Office indicated that appellant had informed them in an August 16, 2006 telephone call that he took a bus route which got him to the work site an hour prior to the beginning of his morning shift. Appellant stated that he arrived at work one hour early so that he could be ready for work, change to work attire and have his morning coffee.

The Office received a statement from Lou Fattrusso, the employing establishment's injured workers program manager, on August 18, 2006. He stated:

> "Arriving at 6:30 a.m. for the 7:20 a.m. shift is much earlier than what is considered reasonable for an employee to arrive for his or her work shift. In [appellant's] case, he does not perform production welding as a daily assignment. He works inside a building handling and repairing equipment and supplies."

By decision dated August 18, 2006, the Office denied the claim, finding that appellant's March 7, 2006 accident and resulting injury was not sustained while he was in the performance of duty. The Office found that the evidence of record did not establish that he was required to be at his place of employment one hour prior to his workshift. It stated that appellant failed to establish that the activity in which he was engaged at the time of his slip and fall accident arose from his employment. The Office found that his injury was a personal injury which was not compensable as it did not arise out of and in the course of employment even though the injury

occurred on the premises. The Office therefore found that the March 7, 2006 injury did not occur in the course of his employment.

On August 29, 2006 appellant requested an oral hearing, which was held on December 21, 2006. Appellant stated at the hearing that, along with some of his coworkers, his custom was to arrive at work an hour early, socialize and drink a soda or eat a snack with his coworkers. When asked whether he was performing actual work duties at that time, appellant responded, "No."

By decision dated April 13, 2007, an Office hearing representative affirmed the August 18, 2006 Office decision. The hearing representative stated that the course of employment for an employee 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. He noted that 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. The hearing representative then found that appellant's activities at the time of his injury were not part of a reasonable interval before official working hours while engaged in incidental employment activities. He stated that the employing establishment did not benefit from appellant being on the premises one hour early and therefore did not constitute a reasonable interval before official working hours. The hearing representative therefore affirmed the August 18, 2006 finding that appellant did not injure his left knee while in the performance of duty on March 7, 2006.

LEGAL PRECEDENT

Congress, in providing for 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. It is not sufficient under general principles of workers' compensation law to predicate liability merely upon the existence of an employee-employer relationship.[1] Congress has provided for the payment of compensation for disability or death 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."[2]

"In the course of employment" deals with the work setting, the locale, and the time of injury, whereas "arising out of the employment" encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury. 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 he is reasonably fulfilling the duties of the employment or engaged in doing something incidental

[1] *George A. Fenske*, 11 ECAB 471 (1960).

[2] *Timothy K. Burns*, 44 ECAB 291 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Christine Lawrence*, 36 ECAB 422 (1985).

thereto; and (d) when it is the result of a risk involved in the employment, or the risk is incidental to the employment or to the conditions under which the employment is performed.[3]

The Board found in *Margaret Gonzales*, 41 ECAB 748, 751 (1990), 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 that 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. The Board noted that a claimant is allowed a reasonable interval before and after official working hours in which he would still be considered in the course of employment. In the case of Gonzales, the Board considered that what constitutes a reasonable interval is not only the length of time involved, but also the circumstances occasioning the interval and the nature of the claimant's activity.

ANALYSIS

The Board finds that appellant's injury on March 7, 2006 was not sustained while in the performance of his federal employment.

Whether a particular case is or is not within the scope of the Federal Employees' Compensation Act depends upon the general test of whether the particular risk may be said to be reasonably incidental to the employment, having in mind all relevant circumstances and the conditions under which the work is required to be performed.[4] The Board notes that appellant's injury occurred, not during lunch or during a recreation period as a regular incident of his employment, but before duty hours had begun. Appellant stated that he arrived at work early on March 7, 2006 in accordance with his usual custom. He explained that he took an early bus which got him to the work site an hour or so prior to the beginning of his morning shift so that he could be ready for work, change to work attire and have his morning coffee. However, Mr. Fattrusso, the injured worker's program manager, asserted in his August 18, 2006 statement that a 6:30 a.m. check-in is much earlier than what is considered reasonable for an employee who begins work at 7:20 a.m. Appellant's injury occurred at 6:20 a.m., when he was on his way to the men's room, one hour before his 7:20 a.m. shift began. Based on this set of circumstances, the Office properly found that appellant's March 7, 2006 accident and resulting injury was not sustained while he was in the performance of duty, as the evidence of record did not establish that he was engaged in work activities or was required to be at his place of employment one hour prior to his workshift. The Board therefore affirms the Office's finding that appellant's left knee injury was not sustained in the performance of duty.

Following the decision appellant requested a hearing. Appellant reiterated at the hearing that he typically arrived at work an hour early to socialize with his coworkers and get himself acclimated to the work environment. He testified, however, that he was not performing actual work duties at that time. Appellant was therefore not engaged in the duties of his work with the employing establishment or in activities which may be characterized as reasonably incidental to

[3] *See Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954); *Harold Vandiver*, 4 ECAB 195 (1951).

[4] *Bernard D. Blum*, 1 ECAB 1 (1947).

the conditions of his employment. The risk giving rise to the injury in this case does not involve appellant's employment or conditions reasonably incidental thereto. The hearing representative properly found that at the time of his accident, appellant was not fulfilling the duties of his employment, but had voluntarily chosen to arrive at work one hour early, at which time he would engage in nonwork-related activities in order to acclimate himself to the work environment.

In the instant case, the employee was not engaged in a temporary-duty assignment or special mission for his employer and as such was not under the protection of the Act while engaged in activities essential to or reasonably incidental to his mission. There is no evidence that appellant's March 7, 2006 injury resulted from activities incidental to his employment. Appellant was injured one hour before his tour of duty began, and he testified that clearly he was on the employer's premises by choice. His activities were not part of a reasonable interval before official work hours while engaging in incidental employment activities. Thus, appellant's accident occurred at a time when he was not actually engaged in an activity having a relationship to his official business.

As none of the requirements for bringing injuries occurring within the course of employment have been met, the injuries appellant sustained from his March 7, 2006 employment accident must be found to be a purely personal pursuit. Consequently, the injuries appellant sustained on March 7, 2006 were not causally related to the incidents of his employment.

The Board finds that, under the circumstances of this case, appellant was not engaged "in the course of his employment" at the time of his injury on March 7, 2006 and, therefore, his left knee was not sustained while in the performance of duty. The April 13, 2007 decision of the Office hearing representative is affirmed.

CONCLUSION

The Board finds that appellant's injury on March 7, 2006 was not sustained while in the performance of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2007 and August 18, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 3, 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