United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 07-1814**
	)	**Issued: June 19, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Brunswick, ME, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 28, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 30 and June 7, 2007 merit decisions finding that he did not sustain an injury in the performance of duty on January 23, 2006. 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 sustained an injury in the performance of duty on January 23, 2006.

FACTUAL HISTORY

On January 24, 2006 appellant, then a 63-year-old clerk, filed a traumatic injury claim for compensation for a slip and fall on ice in the employing establishment's parking lot on January 23, 2006. He indicated that the injury occurred at 4:45 p.m. and that he landed on his back. Appellant's supervisor, Bobby-Jo Watson, checked a box on the form to indicate that he was not considered to be in the performance of duty when the injury occurred. She reported that

appellant's regular duty hours were 5:00 a.m. to 2:00 p.m. and that he had "clocked out for the day" at 4:03 p.m. In support of his claim, appellant submitted reports of Dr. Timothy Manahan, an attending osteopath, dated January 25 to November 24, 2006.

In a January 26, 2006 statement, appellant indicated that on January 23, 2006 he had "clocked out" at the tenth-hour as he did not want to incur penalty time. He asserted that he returned to his office and worked on pay statements regarding vehicle repairs for about 45 minutes. Appellant indicated that he was to retire on about February 3, 2006 and he wanted to wrap up unfinished projects.

In an April 19, 2006 letter, the Office advised appellant of the factual and medical evidence needed to establish his claim. In a May 2, 2006 letter, appellant reiterated that he slipped on a patch of ice in the employing establishment's parking lot and landed on his back. He stated that two people witnessed the fall and helped him to get up. In an April 27, 2006 report, Dr. Manahan opined that appellant sustained muscle spasms, neck pain, thoracic pain and lumbar pain as a result of his January 23, 2006 fall.

In a January 3, 2007 letter, the Office requested additional information from the employing establishment. In a January 26, 2007 response, Doris Baker advised that penalty overtime occurs when an employee works more than 10 hours in 1 day. She indicated that such an employee would be paid double time in wages. Ms. Baker stated that appellant incurred three minutes of penalty overtime on January 23, 2006. She stated that she was not aware that appellant was working "off the clock" and noted that he was not authorized by management to work beyond 10 hours per day. Ms. Baker indicated that appellant retired 10 days after the injury and pointed out that he "stated he wanted to make sure that all work was complete prior to his retirement."

In a January 30, 2007 decision, the Office denied appellant's claim. It found that appellant was not injured in the performance of duty on January 23, 2006 as he was not required or authorized to work the additional time of 45 minutes just prior to the claimed injury.

On February 16, 2007 appellant requested a review of the written record by an Office hearing representative. In a February 16, 2007 letter, he indicated that the work he did off the clock was part of his regular duties and the additional accounting duties he took over. Appellant stated that such work had to be completed before his February 3, 2006 retirement. In a February 5, 2007 letter, he stated that Ms. Baker was not working at the employing establishment on January 23, 2006 and would not have had knowledge of what transpired on that date. Appellant asserted that his supervisor, Ms. Watson, knew that he was "working over" to finish the necessary paperwork and was well aware that he had been working a minimum of 10 hours per day to perform his regular duties along with the additional accounting duties.

In a February 13, 2007 statement, Richard Barrett, a coworker, noted that he was employed from 1981 to 2005 and "during this time frame, on numerous occasions, management was aware of [appellant] working off the clock." In a February 13, 2007 statement, another coworker[1] noted that he worked with appellant for 13 years prior to his retirement and indicated

[1] The name is not entirely legible.

that he "consistently worked in the Brunswick Post Office Building, with supervisor and postmaster knowledge, while he was not on the clock. He was doing vehicle paperwork on supplies in the basement."

In a June 7, 2007 decision, the Office hearing representative affirmed the Office's January 30, 2007 decision. He found that appellant's January 23, 2006 injury was not sustained in the performance of duty as it occurred at an unreasonable interval of time after his work shift ended.

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] The phrase "sustained 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."[4] 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. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he may reasonably be expected to be in connection with the employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[5] 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.[6]

As to employees having fixed hours of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours or at lunch time, are compensable. Given this rule, the Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable time while the employee is on the premises engaged in incidental acts and is based on the circumstance of the employee's activity.[7] However, presence at the employing establishment's premises during work hours or a reasonable period before or after a duty shift, is insufficient, in and of itself, to establish entitlement to benefits for compensability. The claimant must also establish the concomitant requirement of an injury arising out of the employment. This encompasses not only the work setting, but also the causal concept that some factor of the employment caused or contributed to the claimed injury. In order for an injury to be considered

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

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

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

[6] *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[7] *Maryann Battista*, 50 ECAB 343 (1999).

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.[8]

In cases in which coverage has been extended, some substantial employer benefit or requirement has been shown. In *Catherine Callen*,[9] coverage was extended to a legal secretary who sustained a fractured left wrist after she fell over a chair. The injury occurred at 11:00 p.m., following her regular tour of duty which stopped at 5:00 p.m. The Board noted that the employee's presence on the premises that Friday evening was to complete a project for an attorney at the employing establishment which had been requested earlier that day in order that she could work on it during the weekend as the materials were needed the following Monday. That Friday was her last day at the employing establishment prior to her relocation to a U.S. Attorney's office across the country. The Board noted that there was no express prohibition concerning her overtime work and the record established a substantial employer benefit from her presence at work.

ANALYSIS

In the present case, appellant had fixed hours from 5:00 a.m. to 2:00 p.m. On January 23, 2006 he "clocked out" at 4:03 p.m. after working approximately 10 hours, which the employing establishment verified. Thus, the evidence establishes that on January 23, 2006 appellant's workday ended at 4:03 p.m. Appellant's injury, a slip and fall in the employing establishment's parking lot, occurred at 4:45 p.m., approximately 45 minutes after the workday ended. As noted above, a claimant's presence at the employing establishment's premises, a reasonable period after a duty shift, would be insufficient, in and of itself, to establish entitlement to benefits for compensability. A claimant must also establish the concomitant requirement of an injury arising out of the employment, *i.e.*, the causal concept that some factor of the employment caused or contributed to the claimed injury.[10]

The Board notes that it would be instructive to compare the circumstances of the present case with those of the above-cited case of *Callen.* In both cases, it is clear that some type of regular or specially assigned duties were performed. In *Callen*, the employee was completing a project for an attorney on her last day at the employing establishment prior to her relocation to a U.S. Attorney's office across the country. In the present case, appellant worked on pay statements regarding vehicle repairs and performed other regular and specially assigned accounting duties that had to be finished before he retired in about 10 days. Given the nature of the duties in both instances and urgent need for them to be completed, it can be said that substantial employer benefit was derived in both instances. In *Callen*, the employee's supervisor did not have direct knowledge of the employee's presence on site after hours, but on the same day he did specifically assign her the task she was working on when she was injured. In the present case, it is not entirely clear whether appellant's supervisor, Ms. Watson, knew that he was working after hours on January 23, 2006. However, too much emphasis should not be

[8] *Cheryl Bowman*, 51 ECAB 519 (2000); *Shirlean Sanders*, 50 ECAB 299 (1999).

[9] 47 ECAB 192 (1995).

[10] *See supra* note 8 and accompanying text.

placed on whether there was actual knowledge by appellant's supervisor that appellant was working after hours on January 23, 2006. In *Callen*, the Board emphasized that, regardless if there was actual knowledge of the employee's working after hours, there was no express prohibition concerning the performance of such work.

In the present case, there is no evidence that appellant was expressly prohibited from working after hours. Statements from appellant's coworkers suggest that management knew that employees were performing after-hours work and generally tolerated it. Much like in *Callen*, appellant was performing work of an urgent nature which was of substantial benefit to the employer. In *Callen*, the accepted injury occurred a full five hours after the employee had clocked out for the day. In the present case, appellant's claimed injury on January 23, 2006 occurred only about 45 minutes after he clocked out for day. The Board finds that, particularly when one considers the incidental nature of appellant's activity, the claimed injury occurred during a reasonable interval after the end of his workday. Given the high level of the benefits of appellant's work to the employer, the fact that his working after hours was not expressly prohibited and the occurrence of the alleged incident within a reasonable interval after clocking out for the day, the Board finds that appellant's fall on January 23, 2006 occurred in the performance of duty.

CONCLUSION

The Board finds that the alleged incident on January 23, 2006 occurred in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 7 and January 30, 2007 decisions are reversed and the case is remanded for further action consistent with this decision.

Issued: June 19, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board