

fence while driving an official vehicle back to her duty station.¹ Travel orders issued on January 9, 2007 show that, on February 2, 2007, appellant was to leave the training site in Norman, Oklahoma, at 8:00 a.m. and arrive in Lincoln, Nebraska at 5:00 p.m. that day. The employing establishment would reimburse her meal and lodging expenses.

In a February 8, 2007 letter, Christy Marr, appellant's supervisor, stated that, on February 2, 2007, appellant did not leave Norman until 10:30 a.m. Also, instead of continuing north to Lincoln, appellant deviated west to Oklahoma City to visit the Murrah Memorial and antique shops. She resumed driving to Lincoln at 4:30 p.m. At approximately 7:30 p.m., appellant took an incorrect exit from Interstate 35 then missed a stop sign, resulting in the accident.

In a February 13 and March 14, 2007 letters, the employing establishment noted that appellant was not authorized to shop and sightsee during scheduled travel time. Had she returned directly to Lincoln as ordered, she would have completed the trip in seven-and-a-half hours, before pay status ended at 5:00 p.m.

In February 20, 2007 letters, the Office requested additional information regarding the February 2, 2007 accident from appellant and the employing establishment.

In a March 14, 2007 letter, Ms. Marr stated that she was unaware of appellant's plan to shop and sightsee in Oklahoma City. She noted that deviations from travel orders were allowed only for food, fuel and rest periods. Ms. Marr submitted maps showing that McPherson, Kansas, was near Interstate 35, along but not directly on appellant's expected travel route. The accident site was two-and-a-half miles from the interstate. There was no gas station near the accident site.

By decision dated March 28, 2007, the Office denied appellant's claim on the grounds that the February 2, 2007 injuries did not occur in the performance of duty. Appellant was no longer in travel status or performing activities reasonably incidental to her job duties at the time of the accident.

In an April 14, 2007 letter, appellant requested a review of the written record. She acknowledged that her trip to Oklahoma City was for personal, recreational reasons unrelated to her employment. Appellant asserted that Ms. Marr told her to travel at her own pace and not adhere to the written travel orders.² She noted that Ms. Marr singled her out for a proposed suspension for unauthorized travel, whereas other employees were not disciplined for similar trips. Appellant contended that, at the time of the accident, she left I-35 to look for a gas station

¹ A February 2, 2007 police report and emergency room records corroborate appellant's account of events.

² In a July 12, 2007 letter, appellant's husband stated that, after the accident, Ms. Marr stated that she would have left Norman at 11:00.

as the fuel gauge was faulty.³ She asserted that the accident would not have occurred if she had defensive driving training that was not approved until February 2, 2007.⁴

In a June 22, 2007 letter, Ms. Marr stated that appellant's training was completed on February 1, 2007. February 2, 2007 was a travel day only. Appellant was instructed to leave Norman at 8:00 a.m. in order to return to Lincoln by 5:00 p.m. and turn in the vehicle.

In a June 25, 2007 letter, the employing establishment asserted that appellant did not request a change of schedule to allow her to leave Norman two hours late at 10:00 a.m. Also, appellant was 2.5 miles from Interstate 35 at the time of the accident. There were no gas stations nearby.

By decision dated and finalized August 13, 2007, an Office hearing representative affirmed the March 28, 2007 decision, finding that appellant was not in the performance of duty at the time of the February 2, 2007 accident. The hearing representative found that appellant's sightseeing and shopping trip to Oklahoma City was a personal, unapproved deviation from her assigned business route, causing her to be "outside of her authorized travel hours when the injury occurred."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his or her claim, including 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 as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

Section 8102(a) of the Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁸ This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, arising out of and in the

³ In a June 27, 2007 statement, an employing establishment motor pool mechanic asserted that the postal vehicle appellant used was in good working order.

⁴ Appellant made similar assertions in a July 14, 2007 statement. She also asserted that her lack of knowledge of employing establishment travel policies should excuse her from complying with them. Appellant contended that recent decisions of the U.S. Supreme Court regarding sexual harassment policies supported her theory.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ 5 U.S.C. § 8102(a).

course of employment.⁹ Whereas arising out of the employment addresses the causal connection between the employment and the injury, arising in the course of employment pertains to work connection as to time, place and activity.¹⁰

Under the Act, an employee on travel status or a temporary-duty assignment or special mission for her employer is in the performance of duty and, therefore, under the protection of the Act 24 hours a day with respect to any injury that results from activities essential or incidental to her special duties.¹¹ Examples of such activities are eating,¹² returning to a hotel after eating dinner¹³ and engaging in reasonable activities within a short distance of the hotel where the employee is staying.¹⁴ However, when a claimant voluntarily deviates from such activities and engages in matters, personal or otherwise, which are not incidental to the duties of her temporary assignment, she ceases to be under the protection of the Act. Any injury occurring during these deviations is not compensable.¹⁵ Examples of such deviations are visits to relatives or friends while in official travel status,¹⁶ visiting nightclubs and bars,¹⁷ skiing at a location 60 miles from where an employee is undergoing training¹⁸ and taking a boat trip during nonworking hours to view a private construction site.¹⁹

ANALYSIS

Appellant asserted that she sustained neck, back and knee injuries in a single car accident on February 2, 2007 at 7:30 p.m. while returning to her duty station from a temporary-duty assignment. The record substantiates that the incident occurred at the time, place and in the manner alleged. It must now be determined whether the February 2, 2007 incident occurred in the performance of duty.

⁹ See *Bernard E. Blum*, 1 ECAB 1 (1947).

¹⁰ See *Robert J. Eglinton*, 40 ECAB 195 (1988).

¹¹ *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O'Connor*, 4 ECAB 21 (1950).

¹² *Michael J. Koll, Jr.*, 37 ECAB 340 (1986); *Carmen Sharp*, 5 ECAB 13 (1952).

¹³ *Supra* note 11.

¹⁴ *Ann P. Drennan*; *Janet Kidd (James Kidd)*, *supra* note 11; *Theresa B.L. Grissom*, 18 ECAB 193 (1966).

¹⁵ *Karl Kuykendall*, 31 ECAB 163 (1979).

¹⁶ *Ethyl L. Evans*, 17 ECAB 346 (1966); *Miss Leo Ingram*, 9 ECAB 796 (1958); *George W. Stark*, 7 ECAB 275 (1954).

¹⁷ *Conchita A. Elefano*, 15 ECAB 373 (1964).

¹⁸ *Karl Kuykendall*, *supra* note 15.

¹⁹ *Mattie A. Watson*, 31 ECAB 183 (1979).

Appellant asserts that the February 2, 2007 incident occurred during her temporary-duty assignment, thus affording her coverage under the Act.²⁰ However, the record demonstrates that the accident occurred after her duty assignment ended and off the employing establishment's premises. Appellant's travel orders show that she was in pay status from 8:00 a.m. to 5:00 p.m. She was instructed to drive from Norman, Oklahoma to Lincoln, Nebraska during those hours. The accident occurred at 7:30 p.m. in McPherson, Kansas. Appellant was no longer in pay status. Therefore, the incident did not occur during work hours.

The incident may still be covered under the Act if appellant was engaged in an authorized activity incidental to her employment.²¹ However, the record demonstrates that appellant was not authorized to travel at 7:30 p.m. She was to have returned to her duty station at Lincoln by 5:00 p.m. Appellant was delayed by her unauthorized, personal detour to Oklahoma City, an errand not reasonably incidental to her temporary-duty assignment.²² She did not resume travel, thereby ending the deviation, until 4:30 p.m.²³ Appellant was thus still traveling at 7:30 p.m. when the accident occurred. While she asserted that she left the highway to get gasoline, there was no gas station nearby. Also, the accident occurred two-and-a-half miles from the interstate. Appellant submitted no evidence to corroborate her assertion that she was attempting to find gasoline. The purpose of her errand is not ascertainable from the record. Therefore, appellant has not demonstrated that she was performing an activity incidental to her employment at the time of the accident.

The record indicates that appellant was driving an official vehicle at the time of the accident. 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."²⁴ Under most circumstances, the travel must be authorized by the employing establishment and sufficiently important to be regarded as part of appellant's official service.²⁵ In this case, appellant was not authorized to drive the vehicle after 5:00 p.m. on February 2, 2007. The accident occurred at 7:30 p.m. at a location where appellant was not authorized or expected to be. Also, the travel orders do not specify that appellant would be reimbursed for travel expenses incurred after the temporary-duty assignment ended at 5:00 p.m. Therefore, under the circumstances of this case,

²⁰ *Ann P. Drennan*, *supra* note 11.

²¹ *Id.*

²² *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998) (where the employee, after dinner while on a temporary-duty assignment, went with coworkers to a sports bar to drink and play pool before they began the trip to return to the hotel. The Board held that the trip to the sports bar was not reasonably incidental to the employee's temporary-duty assignment).

²³ *Gayle E. Bowling*, 56 ECAB 416 (2005).

²⁴ 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).

²⁵ *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, *supra* note 24; *Mary Margaret Grant*, *supra* note 24.

the fact that appellant was driving an official vehicle does not bring the accident within the performance of duty.

The Board finds that appellant was not in the performance of duty at the time of the February 2, 2007 accident. The incident did not occur during work hours, on the employing establishment's premises or while appellant was engaged in activities reasonably incidental to her employment. The Office properly denied the claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 13 and March 28, 2007 are affirmed.

Issued: May 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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