

The employing establishment challenged the claim on the grounds that the alleged injury did not occur in the performance of duty, noting that appellant was not in his vehicle or on travel status at the time of the alleged incident. Appellant submitted December 19, 2007 day-surgery discharge instructions from the University of Massachusetts Memorial Medical Center, reflecting that he sustained a left ankle fracture on December 10, 2007.

In a January 7, 2008 letter, the Office informed appellant that the information submitted was insufficient to establish his claim. It advised him to provide additional information as to whether he was performing employment duties at the time of the alleged injury and to explain why he believed the injury was employment related.

Appellant submitted medical reports from Dr. Walter J. LeClair, a Board-certified orthopedic surgeon, including: a December 19, 2007 operative report; a December 31, 2007 duty status report, reflecting a diagnosis of left ankle fracture; and a December 31, 2007 attending physician's report noting that he had performed left ankle surgery on December 19, 2007. The record contains December 10 and 17, 2007 x-ray reports of the left ankle and foot. In a December 17, 2007 clinic note, Michele A. Patterson, a nurse practitioner, stated that appellant slipped on ice while trying to salt his driveway, resulting in a fractured ankle.

On January 10, 2008 appellant stated: "I could not have stepped into my vehicle, let alone safely exited my driveway, it was extremely icy." He contended that, since he uses his own vehicle for work, his shift begins when he prepares his car for work.

By decision dated February 13, 2008, the Office denied appellant's claim on the grounds that the evidence of record did not establish that his injury was sustained in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ 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.² The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment.³ The Board has recognized as a general rule that off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.⁴

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *See R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Gabe Brooks*, 51 ECAB 184 (1999).

Exceptions to the general coming and going rule have been recognized, which are dependent upon the relative facts to each claim: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his or her employment with the knowledge and approval of the employer.⁵ It is a well-settled principle of workers' compensation law that where an employee, as part of his job, is required to bring with him his own car, truck or motorcycle for use during his working day, the trip to and from work is, by that fact alone embraced within the course of employment.⁶

The Office's procedure manual includes letter carriers in the first of four general classes of off-premises workers.⁷ In determining whether this class of employees has sustained an injury in the performance of duty, the factual evidence must be examined to ascertain whether, at the time of injury, the employee is within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling employment duties or engaged in activities reasonably incidental thereto.⁸

ANALYSIS

The Board finds that appellant did not sustain an injury in the performance of duty on December 10, 2007.

As noted above, where an employee is required to use his own vehicle as part of his job during the working day, the trip to and from work is by that fact alone embraced within the course of employment."⁹ Accordingly, an injury sustained while traveling to and from work may be within the performance of duty for that employee.¹⁰ Because rural carriers may use their own transportation to deliver their routes, which is a benefit to the employer, they may be deemed to be in the performance of their duties when they are driving their vehicles to and from their route, when they are required by the employing establishment to provide their own transportation. However, appellant was not driving, and was not inside, his vehicle at the time of the injury. In

⁵ *Melvin Silver*, 45 ECAB 677 (1994); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

⁶ *Melvin Silver*, *supra* note 5.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5a(1) (August 1992). See *David P. Sawchuk*, 57 ECAB 316 (2006); *Donna K. Schuler*, 38 ECAB 273 (1986).

⁸ *Thomas E. Keplinger*, 46 ECAB 699 (1995); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5b (August 1992).

⁹ *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); A. Larson, *The Law of Workers' Compensation* § 15.05 (2000).

¹⁰ *Ronda J. Zabala*, 36 ECAB 166 (1984),

similar cases, the Board has held that a claimant is not considered to be in the performance of duty until he actually enters his vehicle.¹¹

To find that injury within the scope of the Act, it must be shown that a causal relationship existed between the employment and the resultant injury.¹² The Board notes that the Office's procedures include postal letter carriers in the first of its four "broad classes of off-premises workers," recognizing that the nature of the duties of these employees allows them to be on the employer's premises for only a portion of the day.¹³ In determining whether this type of worker sustained an injury in the performance of duty, it must be determined whether the employee was performing assigned duties, was engaged in an activity which was a reasonable incident of the assignment, or had deviated from the assignment and was engaged in a personal activity which was unrelated to work.¹⁴ In the instant case, there were no employment factors involved in appellant's presence at his home at the time the injury occurred. The record reveals that, at the time he broke his ankle, he was off-duty, at home, salting and sanding his driveway prior to leaving for work. Appellant was not performing his assigned duties, nor was he engaged in any activity which was a reasonable incident to his employment. Therefore, his case falls within the general rule relating to off-premises injuries.¹⁵

As appellant sustained an injury in the driveway in front of his residence prior to entering his vehicle, the Board finds that he did not sustain an injury in the performance of duty.

CONCLUSION

The Board finds that appellant did not sustain an injury in the performance of duty on December 10, 2007.

¹¹ See *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001) (where claimant, a rural carrier, fractured her ankle when she slipped on ice in her driveway while walking to her private vehicle, the Board found that she had not sustained an injury in the performance of duty).

¹² *Donna K. Schuler*, *supra* note 7; *Jacqueline Nunnally-Dunord*, 36 ECAB 217 (1984); *Mary Chiapperini*, 7 ECAB 959 (1955).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5a(1) (August 1992).

¹⁴ *Id.* at Chapter 2.804.5(b).

¹⁵ See *Helen K. Mickler*, 15 ECAB 392 (1964).

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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