United States Department of Labor
Employees' Compensation Appeals Board

P.S., Appellant	)	
and	)	**Docket No. 08-2216**
U.S. POSTAL SERVICE, GOLDEN VALLEY ANNEX, Santa Clarita, CA, Employer	)	**Issued: September 25, 2009**

Appearances:
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 11, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 13, 2007 and January 15, 2008 merit decisions denying her claim for a January 18, 2006 employment injury. Pursuant to 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 met her burden of proof to establish that she sustained an injury in the performance of duty on January 18, 2006.

FACTUAL HISTORY

On February 27, 2006 appellant, then a 34-year-old rural mail carrier, filed a traumatic injury claim alleging that she sustained a work-related injury due to a vehicular accident on January 18, 2006. She indicated that a vehicle lost control on the highway and hit her vehicle

resulting in broken bones in both legs and amputation of her left leg.[1] Appellant's supervisor, Erica Parrino, stated on the claim form that appellant's claimed injury did not occur in the performance of duty because she "was on her way to work, not at work." She asserted that appellant was traveling 65 miles per hour in a 55-mile per hour zone.

A police accident report indicates that the accident occurred on State Route 14 just south of its intersection with Barrel Springs Road. Appellant lived at 1253 East Avenue J in Lancaster, CA, (about three miles away from State Route 14) and her duty station was located at 26541-B Ruether Avenue in Saugus, CA (about four miles from State Route 14). Appellant had traveled just over a quarter of the way from her home to her duty station when the accident occurred on State Route 14.[2] The employing establishment has not contested that appellant was commuting between her home and duty station at the time of her accident.

In a March 7, 2006 letter, Ms. Parrino stated that appellant's claimed injury did not occur during her scheduled work period because she was required to report for duty at 7:30 a.m. and the accident occurred at 7:33 a.m. when she was approximately 40 miles away from her work station. She asserted that, in order for a rural mail carrier to be covered for a claimed injury, she must be driving to and from work in the vehicle she normally uses to deliver mail. Appellant was using her SUV, a GMC Jimmy, without informing management that she was using this vehicle. Ms. Parrino asserted that she had never observed appellant using the GMC Jimmy and stated that she had not reported that her privately-owned Jeep, the delivery vehicle of record, was not working. She indicated that the Jeep was parked in the space at the Golden Valley Annex where it always was parked and that appellant had a duty to remove the vehicle if it was not working. Moreover, the GMC Jimmy was not insured as a work vehicle under a commercial policy.

The record contains a January 18, 2006 California traffic collision report in which California Police Officer McKee indicated that appellant's GMC Jimmy was involved in an accident with another vehicle at 7:33 a.m. on January 18, 2006 while she was driving on the Antelope Valley Freeway. Officer McKee stated that a vehicle which was traveling out of control hit another vehicle which in turn hit appellant's vehicle.[3] Appellant submitted photographs which purported to show her Jeep in a parking lot on the employing establishment's premises.

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[1] Appellant indicated that the accident occurred at 7:30 a.m. The form listed her regular work hours as 7:30 a.m. to 4:00 p.m. She was driving her privately-owned GMC Jimmy, a kind of sport utility vehicle (SUV).

[2] The employing establishment indicated that appellant was 40 miles from her duty station at the time of the accident but she actually was about 30 miles away.

[3] Officer McKee indicated that appellant had been driving 60 to 65 miles per hour on a road with a 55-mile per hour speed limit. He did not explain the basis for this determination.

In a March 20, 2006 decision, the Office denied appellant's claim that she sustained an injury in the performance of duty on January 18, 2006. It indicated that the employing establishment had provided convincing evidence challenging her claim and stated:

> "The accident occurred at 7:33 a.m., approximately 40 miles from your duty station. Your agency reported you were late for work at the time of the accident and you had previously been consulted about reporting for work on time. As a rural route carrier, you would be covered to and from work driving a designated work vehicle. You were driving your POV [privately-owned vehicle] and not the designated vehicle, a Jeep. Your boyfriend reported the designated vehicle was not working and you were using your POV; however, you did not report the designated vehicle inoperable and that you were using another vehicle. The U.S. Postal Service report[ed] that[,] if the designated vehicle was inoperable, you were responsible [for] removing the vehicle from the U.S. Postal Service parking lot. Photos were received indicating your Jeep was parked in the U.S. Postal Service parking lot."

Appellant submitted statements of two coworkers. In an April 3, 2006 statement, Daniel Doppke stated that he observed appellant using her Chevrolet Blazer to deliver her mail route.[4] He noted, "The use of her Chevrolet Blazer for mail delivery was on a daily basis as her 'postal Jeep' has been in need of repair for many months." In another April 3, 2006 statement, John Wittner indicated that he had worked with appellant for almost a year and noted that when he first started working with her she was using her Chevrolet Blazer to deliver mail. Appellant attempted to have her Jeep fixed once but it broke down on her after using it only one day, thus causing her to use her Blazer for the rest of the year. He stated, "As far as I know she has always used her Blazer to deliver the mail on her route. Even when I subbed in this office two years ago."

Appellant requested a review of the written record by an Office hearing representative. In a July 14, 2006 decision, the Office hearing representative affirmed the Office's March 20, 2006 decision finding that appellant did not sustain an injury in the performance of duty on January 18, 2006. The Office hearing representative stated that appellant was injured on her way to work given that she was required to report for duty at the Golden Valley Annex by 7:30 a.m. but noted that the police report established that the accident occurred at 7:33 a.m. about 40 miles from where she was supposed to report for duty.

In a January 10, 2007 reconsideration request letter, appellant, through her attorney Daniel Goodkin, made reference to a Board case which indicated that when the employee as part of her job is required to bring her own car, truck, or motorcycle for use during his working day, the trip to and from work is by that alone embraced with the course of employment. Mr. Goodwin indicated that on January 18, 2006 appellant was on her way to work in a GMC Jimmy she was using as her work vehicle and therefore the GMC Jimmy must be considered her

[4] It should be noted that a Chevrolet Blazer is similar in appearance to a GMC Jimmy.

work vehicle. He asserted that this fact was supported by the statements of coworkers and customers.[5]

In a March 8, 2007 decision, the Office affirmed its July 14, 2006 decision. Regarding the reasons for denying appellant's claim, the Office stated:

> "The issue here is not that witnesses observed the claimant delivering mail in her private SUV or that she used her personal vehicle. The Office acknowledges that the claimant delivered mail in her personal vehicle and that witnesses support her claim. We also acknowledge that the claimant's own personal vehicle was involved in an accident. We consider these items to be factual. The issue is merely the fact that the claimant should have notified her employer that her government[-]issued vehicle used for delivering mail was unserviceable and could not be driven…. However, the evidence presented is insufficient to substantiate that the claimant followed procedures in notifying her employer that her work vehicle could not be driven and needed to request a replacement vehicle or entertain other viable options."

Appellant submitted numerous medical reports concerning the treatment of her leg injuries, including reports regarding the amputation of her left leg below the knee. Mr. Goodkin continued to provide arguments which were similar to those previously provided. The record was supplemented to contain portions of the employing establishment's handbook for employees.[6]

In a September 13, 2007 decision, the Office affirmed its March 8, 2007 decision. It stated that in order for a rural letter carrier to be covered, the employee must be driving to and from work in the vehicle she normally uses to deliver mail, but indicated that appellant was in her SUV when the accident occurred. The Office stated that rural carriers have the responsibility to notify management if they are using a different vehicle to deliver mail, but indicated that there was no evidence to establish that appellant provided this notification.[7]

Appellant submitted a statement in which Katherine Krell, an employing establishment employee, stated that management never questioned her or required her to sign forms when she switched back and forth between personal and agency vehicles to deliver mail. In an October 11, 2007 reconsideration request, Mr. Goodkin indicated that appellant was covered by the Act because she intended to deliver mail in her GMC Jimmy on January 18, 2008. In a

[5] On April 12, 2006 Mr. and Mrs. James Corane indicated that appellant regularly delivered mail to them in a personally-owned beige SUV. On April 4, 2006 Vanessa Nicholas indicated that she came to the Golden Valley Annex in 2005 and witnessed appellant using her Chevrolet Blazer when delivering the mail.

[6] Section 171.51a of the handbook provided that rural mail carriers are considered to be in the performance of duty for purposes of the Federal Employees' Compensation Act when driving their own vehicle between their home and the post office and between the post office and their home provided that the records indicate that the employing establishment required the carrier to furnish the vehicle.

[7] The Office also indicated that appellant failed in her duty to remove her inoperable Jeep from the agency premises.

November 19, 2007 letter, Ms. Parrino indicated that records showed that appellant often used agency vehicles to deliver mail in addition to her personal vehicles. She asserted that Ms. Krell was not familiar with the operations of the Golden Valley Annex.

In a January 15, 2008 decision, the Office affirmed its September 13, 2007 decision. The Office indicated if appellant had driven her officially-designated Jeep to work on January 18, 2006 she would have been covered. It noted, however, that on the date in question, her Jeep was already at the employing establishment's premises at the time of the accident.

LEGAL PRECEDENT

The Act[8] 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."[9] 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."[10] 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."[11] 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.[12] In order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[13]

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[8] 5 U.S.C. §§ 8101-8193.

[9] 5 U.S.C. § 8102(a).

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

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

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

[13] *See id.*

It is a well-settled principle of workers' compensation law that where the employee as part of her job is required to bring her own car, truck, or motorcycle for use during her working day, the trip to and from work is by that alone embraced with the course of employment.[14]

The Board has held that the mere act of disobedience of a rule or an order does not necessarily place an employee outside the sphere of her employment so that she loses the benefits of the Act. When misconduct involves a prohibited overstepping of the boundaries defining the ultimate work to be done by a claimant, the prohibited act is outside the course of employment. However, when misconduct involves a violation of regulations or prohibitions relating to methods of accomplishing that ultimate work, the act remains within the course of employment. Violations of express prohibitions relating to incidental activities, such as seeking personal comfort, as distinguished from activities contributing directly to the accomplishment of the main job, are an interruption of the course of employment.[15]

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged, and whether it is reasonably incidental to the employee's work assignment or whether it represents such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[16] The standard to be used in determining whether an employee has deviated is that, in addition to a person taking a "somewhat roundabout route" or not taking the most direct route between the place of origin and the point of destination, it must be shown that the deviation was "aimed at reaching some specific personal objective."[17]

ANALYSIS

On February 27, 2006 appellant, a rural mail carrier, filed a traumatic injury claim alleging that she sustained a work-related injury due to a vehicular accident on January 18, 2006. The evidence reveals that appellant was driving to work in her privately-owned GMC Jimmy when the accident occurred at about 7:30 a.m. on that date.[18]

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[14] *J.E.*, 59 ECAB __ (Docket No. 07-814, issued October 2, 2007); *Ronda J. Zabala*, 36 ECAB 166, 171 (1984). The Board notes that in order to find that an employing establishment requires use of a private vehicle it is not necessary to find that use of such a vehicle has been made absolutely mandatory by the employing establishment. Rather, reference is made to the practice of the employing establishment and the usefulness of engaging private vehicles to carry out work duties. *See J.E.* It should be noted that it is a common practice for rural mail carriers to use their own vehicles to deliver mail and Office procedure has addressed this circumstance. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6c (August 1992).

[15] *See Thomas E. Keplinger*, 46 ECAB 699 (1995); *Conrad R. Debski*, 44 ECAB 381 (1993).

[16] *Thomas E. Keplinger*, 46 ECAB 699, 706 (1995).

[17] *Dannie G. Frezzell*, 40 ECAB 1291, 1294 (1989). The Board has also stated that a deviation from an employment trip for personal reasons, that is, one aimed at reaching some specific personal objective, takes an employee out of the course of employment until he returns to the route of the business trip unless the deviation is so insubstantial that it may be disregarded. *Juan Antonio Bonilla*, 37 ECAB 598, 600-01 (1986).

[18] Appellant's regular work hours were 7:30 a.m. to 4:00 p.m.

The Board has held that where the employee as part of her job is required to bring her own car, truck, or motorcycle for use during her working day, the trip to and from work is by that alone embraced with the course of employment.[19] Several witness statements show that appellant had been using her GMC Jimmy to deliver mail on her rural mail route.[20] The employing establishment has not contested that appellant had been using her GMC Jimmy to deliver mail in the days leading up to and including January 18, 2006.[21]

The Board also finds that the accident occurred at a place where appellant was reasonably expected to be in that it occurred on a direct commuting route between her home and her duty station. The accident occurred on State Route 14 just over a quarter of the way from her home in Lancaster, CA, to her duty station in Saugus, CA. Appellant lives about three miles from State Route 14 in Lancaster, CA, and her duty station is located about four miles from State Route 14 in Saugus, CA. Her travel by State Route 14 served as a primary direct commuting route between the two points. The employing establishment did not contest that appellant had deviated from her usual commute between her home and duty station at the time of her accident. Therefore, this is not a case in which the employee took a geographical deviation from the work assignment such that she would have been engaged in personal activities unrelated to her employment.[22]

Given that at the time of the January 18, 2006 accident appellant was on her way to work in her GMC Jimmy and intended to use it that day to deliver mail, the Board finds that her injury on that date occurred in the performance of duty. Appellant's injury occurred within the period of her employment, at a place where she was reasonably expected to be, and while she was engaged in activities which were incidental to her employment as a rural mail letter carrier. Moreover, the employment requirement of appellant using her vehicle to get to work gave rise to the injury.[23]

In contesting appellant's claim, the employing establishment argued that her injury did not occur in the performance of duty because the GMC Jimmy she was driving on January 18, 2006 was not her officially "designated" mail delivery vehicle. The employing establishment asserted that a Jeep, which also was privately owned by appellant, was her designated vehicle. Appellant had indicated that she could not use her Jeep because it required repairs and the employing establishment asserted that she did not report this fact to management. The employing establishment argued that these actions constituted violations of agency policy and

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[19] *See supra* note 14 and accompanying text.

[20] Several witness indicated that appellant had been driving a Chevrolet Blazer. However, it should be noted that a Chevrolet Blazer is similar in appearance to a GMC Jimmy and the witnesses likely confused the two vehicle makes.

[21] The Board notes that it can be found in the present case that the employing establishment "required" the use of private vehicles within the meaning of Board precedent. It is a common practice for rural mail carriers to use their own vehicles to deliver mail as the U.S. Postal Service has found this practice useful in carrying out the delivery of mail. *See supra* note 14.

[22] *See supra* notes 16 and 17 and accompanying text.

[23] *See supra* notes 11, 12 and 13 and accompanying text.

took appellant out of the performance of duty.[24] In denying her claim, the Office advanced this argument as the primary reason for finding appellant not in the performance of duty.

The Board has held that the mere act of disobedience of a rule or an order does not necessarily place an employee outside the sphere of her employment so that she loses the benefits of the Act. When misconduct involves a prohibited overstepping of the boundaries defining the ultimate work to be done by a claimant, the prohibited act is outside the course of employment. However, when misconduct involves a violation of regulations or prohibitions relating to methods of accomplishing that ultimate work, the act remains within the course of employment.[25]

Assuming that appellant violated agency policy regarding the designation of her work vehicle,[26] her actions related to the method of accomplishing her work and did not constitute an interruption or deviation from the course of her federal employment. Therefore, appellant was not taken out of the performance of duty because she drove her GMC Jimmy and not her Jeep.

The Board finds that appellant sustained an injury in the performance of duty on January 18, 2006. The case is remanded to the Office to determine the nature of the injury sustained on January 18, 2006 and any resultant entitlement to disability compensation and medical benefits.

CONCLUSION

The Board finds that appellant met her burden of proof to establish that she sustained an injury in the performance of duty on January 18, 2006.

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[24] The employing establishment made reference to sections of its handbook for employees. It indicated that if appellant had used her Jeep on January 18, 2006 she would have been covered under the Act.

[25] *See supra* note 15 and accompanying text.

[26] The Board notes that it is not clear that such a violation occurred in the present case. The Office also suggested that appellant's claim was denied because she was speeding at the time of her accident. The police officer who first reached the accident scene after the accident stated that appellant had been driving 60 to 65 miles per hour on a road with a 55-mile per hour speed limit. The officer did not explain the basis for this determination and there is no other evidence of record regarding the speed that appellant was traveling. Moreover, the Office did not present Board precedent showing that exceeding the speed limit by such a degree would take appellant out of the performance of duty under the circumstances of the present case.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 15, 2008 and September 13, 2007 decisions are reversed and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: September 25, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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