

that occurred on June 9, 2010 at 7:30 a.m. on his way to a work-related meeting. He stated that at the time of the accident he was driving on a curve when a tire blew and his vehicle hit an embankment. The employing establishment controverted the claim, arguing that appellant was not in work status at the time of the accident. It noted that, although he was due to report for a scheduled work-related meeting at 8:30 a.m., the accident did not occur on a direct route to the scheduled meeting, but rather occurred on the way to appellant's home.

The record contains a June 9, 2010 traffic crash report reflecting that appellant went off the road into a ditch on the date in question when his left front tire blew out as he was heading eastbound into a curve on Northfield Road.

In an employing establishment motor vehicle accident report, Supervisor Susan White stated that at 7:30 a.m. on June 9, 2010 appellant was driving a federal vehicle on a wet road when his tire blew out and he went into an embankment. Appellant reported that he had started his trip in Zanesville, Ohio at 7:00 a.m. and was on his way to a regular meeting in Caldwell, Ohio, which had been authorized orally. Ms. White indicated by placing a checkmark in the "yes" box that the accident occurred within appellant's scope of duty.

The record contains a June 15, 2010 memorandum from Robert Smith of the employing establishment pertaining to his investigation of the circumstances surrounding the June 9, 2010 accident. On June 10, 2010 appellant informed Mr. Smith that he was a night watchman for the Dollar General in Zanesville, Ohio. Appellant reportedly left Zanesville at the end of his shift with the purpose of driving to an 8:30 a.m. meeting with his crew leader in Caldwell, Ohio. He stated that, due to construction on the access ramp at Interstate 70 that would have taken him east to Interstate 77 and south to the meeting in Caldwell, he took an alternate route that took him east northeast. Mr. Smith noted that the alternate route was in the direction of appellant's residence. He stated that appellant had access to Interstate 70 off of Airport Road where he worked. Mr. Smith opined that appellant was going home from his night job at the time of the accident. A map provided by him reflected the location of the June 9, 2010 accident relative to appellant's residence and the location of the scheduled employing establishment meeting. According to notations on the map, the accident occurred on a location that was on a route to both appellant's home and to the meeting site.

In a letter dated June 24, 2010, OWCP asked the employing establishment to clarify whether appellant was reimbursed for travel from a location other than from his residence. Additionally, the employing establishment was asked if it had attempted to clarify whether construction had required appellant to deviate from his regular route to his scheduled meeting. In a letter of the same date, OWCP asked appellant to provide additional information regarding the purpose of his trip on the date of the accident and whether he was afforded coverage by the employing establishment from Dollar General to his meetings with his supervisor.

In a July 12, 2010 statement, Ms. White indicated that, as a crew leader assistant, appellant was required to meet at the McDonald's in Caldwell, Ohio at 8:30 a.m. every Monday thru Friday and Saturday, as needed. Referring to the employing establishment's D556 (NRFU Enumerator Manual), she stated that daily pay and work records should always reflect travel beginning at the employee's home and ending at the employee's home. Noting that the distance

between his home and the meeting place was 34 miles, Ms. Smith opined that appellant was on route from his private job to his home at the time of the injury.

In a letter dated July 19, 2010, the employing establishment reported that it paid field employees from their duty stations (home) to their work areas and back to their homes. Any deviation is considered a nonwork event. As appellant was on a route to his home at the time of the accident, the employing establishment contended that it was not work related. It noted that the initial determination on the CA-1 form that the accident was work related was superseded by information discovered later.

The record contains a copy of Chapter 3 of the employing establishment manual concerning reimbursable expenses. Pursuant to the manual, an employee is to be reimbursed for miles traveled from his home to a training site, or job assignment area, and the returning trip. An employee is not to be paid for miles driven while performing personal errands, breaks or other unofficial time.

In a July 5, 2010 statement, appellant explained that he had taken an alternative route from his night job to his scheduled 8:30 meeting on the date in question because Dollar General's management had advised him of a planned road closing on route 93, north of I70, which was his point of origin. Management had provided him with directions showing a proposed alternate route, which he followed.

By decision dated July 29, 2010, OWCP found that appellant was not injured while in the performance of duty. It found he had not established that he was entitled to reimbursement for travel to his meeting on the date in question, because his point of origin was not his home.

On August 16, 2010 appellant requested a telephonic hearing. In a December 13, 2010 letter, he stated that he had routinely been reimbursed for travel that originated at the Dollar General in Zanesville, OH. Appellant enclosed daily pay and travel records requesting reimbursement for travel on February 1, 2010 from his point of origin (his job in Zanesville, OH) to his duty station in Bridgeport, OH, and on March 2, 2010 for travel from his job in Zanesville to his duty station at I.A. Cash Co. The record reflects that, on both days, appellant left Zanesville at 7:00 a.m.

At the December 13, 2010 hearing, appellant testified that he had left his night job and was on his way to a scheduled meeting in Caldwell on the morning of the June 9, 2010 accident. He asserted that the route he traveled that morning was not on the way to his home. Appellant stated that, when he was hired approximately a year prior, the employing establishment was aware that he had a second job at Dollar General. Requests for reimbursements, documented by daily pay slips noting travel between his night job and meetings required by the employing establishment had not been previously questioned. Appellant testified that the official start time for the meeting in Caldwell was 8:30 a.m., but that people began arriving at 8:10 a.m. He noted that travel time between his night job and the meeting place in Caldwell was approximately 45 minutes.

On January 5, 2011 the employing establishment reiterated its contention that, because appellant was not on a route from his home to his federal job at the time of the accident, he was

not in the performance of duty. Further, even though he was erroneously reimbursed for travel between his second job and the employing establishment, he was not in the performance of duty.

By decision dated February 22, 2011, an OWCP hearing representative affirmed the July 29, 2010 decision. He noted that appellant was in the period of employment at the time of the accident. The representative found, however, that because his travel did not originate at his home, as required for reimbursement by the employing establishment, appellant deviated from his course of employment for personal reasons. Therefore, he was not in the performance of duty at the time of the accident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; 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 or specific condition for which compensation is claimed is causally related to the employment injury.² 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.³

FECA 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.⁴ The phrase 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. In addressing the issue, the Board has stated that for an incident to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master’s business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.⁵

The Board has also 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.⁶ Due primarily to the myriad of factual situations presented by individual cases over the years, certain exceptions to the general rule have developed where the hazards of travel may fairly be considered a hazard of employment. Exceptions to the general coming and going rule

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Irene St. John*, 50 ECAB 521(1999); *Michael E. Smith*, 50 ECAB 31 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ 5 U.S.C. § 8102(a).

⁵ *George E. Franks*, 52 ECAB 490 (2001).

⁶ *Gabe Brooks*, 51 ECAB 184 (1999).

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; (4) where the employee uses the highway to do something incidental to his or her employment with the knowledge and approval of the employer; and (5) where the employee is required to travel during a curfew established by local, municipal, county or state authorities because of civil disturbances or other reasons.⁷

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 was reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee became engaged in personal activities unrelated to employment.⁸

ANALYSIS

The record reflects that appellant was an "off-premises worker" whose work was generally conducted "out in the field" rather than at the employing establishment. His work in the field as a crew leader assistant was in the nature of a traveling auditor or inspector whose work required that he generally be in travel status. An "off-premise worker" injured while enroute between work and home is generally provided protection under FECA.⁹ In this case, however, appellant was not traveling between his federal job assignment and his home. The Board finds that appellant was not injured in the performance of duty on June 9, 2010 due to a deviation from the course of his employment.¹⁰

The evidence establishes that appellant used a government vehicle to perform his work duties and was reimbursed for miles traveled from his home to a training site, or job assignment area and the returning trip. In this case, however, appellant was not traveling between his home and a training site or job assignment at the time of the accident. He contends that the accident should be considered to be in the performance of duty because he was on his way to a required meeting when it occurred. The relevant issue, however, is not appellant's destination at the time of the accident but rather whether he was injured between his home and his federal employment. It is undisputed that his trip began in Zanesville, Ohio, where he worked as a night watchman at

⁷ *Melvin Silver*, 45 ECAB 677 (1994); *Estelle M. Kasprazak*, 27 ECAB 339 (1976); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6(a)(1) (August 1992).

⁸ *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6 (August 1992).

¹⁰ A. Larson, *The Law of Workers' Compensation* § 19.00.

the Dollar General. Appellant's presence at the Dollar General constituted a deviation from his business trip for personal reasons, taking him out of the course of his employment.¹¹

Appellant contends that the employing establishment knew that he worked as a security guard when it hired him and provided evidence that he had been reimbursed for travel between his job at the Dollar General and various federal job assignments in the past. The mere knowledge of appellant's second job and the fact that he traveled from the Dollar General to his federal job does not establish that he was acting under the direction of his employer at the time he was injured and is not sufficient to make the practice an activity that is incidental to employment. Further, the erroneous reimbursement of expenses submitted for travel outside the scope of the employing establishment's manual does not convey coverage to the July 9, 2010 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.¹² 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.¹³ In this case, reimbursement for expenses was authorized only for travel between home and appellant's federal employment. The accident occurred at a location between appellant's federal and private employment. Therefore, under the circumstances of this case, the fact that appellant was driving an official vehicle does not bring the accident within the performance of duty. Rather appellant was using his federally provided vehicle as a convenience to further his non-Federal employment.

Under the circumstances of this case, the Board finds that appellant was not in the performance of duty at the time of the June 9, 2010 accident. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant was not in the performance of duty at the time of the June 9, 2010 accident.

¹¹ See *Gabe Brooks*, *supra* note 6 (The employee, an IRS agent whose work was generally conducted out in the field, was injured in an automobile accident after finishing work for the day. The Board recognized that an off-premises worker injured between work and home is generally provided protection under FECA and found that the claimant was an off-premises employee who would have been considered to be in the course of his employment were not for a deviation on his way home).

¹² 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).

¹³ *Dennis L. Forsgren (Linda N. Forsgren)*, 53 ECAB 174 (2001); *Gabe Brooks*, *supra* note 6; see *Mary Margaret Grant*, *supra* note 12; see generally A. Larson, *The Law of Workers' Compensation*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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