United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 10-920**
	)	**Issued: February 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Fort Mill, SC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from the January 12, 2010 decision of the Office of Workers' Compensation Programs denying her claim for an injury on January 20, 2009. 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 while in the performance of duty on January 20, 2009.

FACTUAL HISTORY

On February 14, 2009 appellant, then a 25-year-old rural carrier associate, filed a traumatic injury claim alleging that on January 20, 2009 she was a passenger in a coworker's vehicle en route to work when it was struck head on by another vehicle. She sustained a fractured right femur. Appellant normally delivered rural route mail in her private vehicle but her car would not start on January 20, 2009 so she asked a coworker for a ride to work. She

indicated that she telephoned her supervisor about the problem with her car and asked whether she could ride to work with a coworker and case mail while waiting for her husband to repair her car and deliver it to the postal facility. Appellant's supervisor consented to this arrangement. The employing establishment controverted her claim, noting that she was traveling to work as a passenger in a coworker's private vehicle.

By decision dated April 10, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on January 20, 2009 while in the performance of duty.

Appellant requested a hearing that was held on August 3, 2009. She contended that she was in the performance of duty because she was a passenger in a private vehicle that was used in the course of employment by her coworker, another rural carrier. Appellant also contended that the coworker's vehicle was part of the premises of the employing establishment because it was a mandatory part of the employment environment for her coworker.

By decision dated January 12, 2010, an Office hearing representative affirmed the April 10, 2009 decision.[1]

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for the payment of compensation for 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" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4] "In the course of employment" relates to the elements of time, place and work activity. 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 her master's business, at a place when she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. As to the phrase "in the course of employment," the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to and from work, before or after work hours or at lunch time, are compensable.[5] The Board has stated, as a general rule, that off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work, are not

[1] Subsequent to the January 12, 2010 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Id*. at § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *D.L.*, 58 ECAB 667 (2007).

compensable as they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[6]

Exceptions to the general coming and going rule have been recognized, which are dependent upon the facts of 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 firefighters; 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.[7]

Although there is a presumption that employees with fixed hours and places of work are not entitled to coverage for commuting, in the case of employees furnishing their own conveyance, coverage is extended when the employee is in the vehicle and driving to and from work because she is required to take her vehicle to perform her regularly assigned duties.[8]

ANALYSIS

Appellant sustained a fractured right femur on January 20, 2009 during a motor vehicle accident while traveling to work. The accident did not occur on the employing establishment premises.

The issue is whether appellant's claimed injury occurred in the performance of duty, that is, in the course of her employment despite the fact that it did not occur on employing establishment premises. In the case of employees furnishing their own conveyance, coverage is extended when the employee is in the vehicle and driving to and from work because she is required to take her vehicle to perform her regularly assigned duties.[9] As noted by the solicitor on appeal, appellant was not driving her own vehicle at the time of injury, the vehicle that she used in performing her job, because it was not working. She planned to secure alternative transportation to work while her husband attempted to repair her vehicle. Appellant planned to case mail while waiting for her husband and mother to deliver the car to her workplace. To get to her job, she rode as a passenger in a coworker's vehicle. Appellant did not use the coworker's vehicle in performing her regularly assigned duties. She was merely commuting to work and she

[6] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

[7] *See Jon Louis Van Alstine*, 56 ECAB 136 (2004) (finding that, employment did not fall within any exception to the general rule, the Board denied coverage where the employee sustained an off-premises injury while riding his motorcycle to work).

[8] *See Melvin Silver*, 45 ECAB 677 (1994).

[9] *Id*.

sustained her injury due to the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[10] Consequently, appellant was not in the performance of duty.[11]

The Board finds that appellant's injury did not arise out of and in the course of her federal employment. For the reasons stated above, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on January 20, 2009.

On appeal, appellant contends that she was in the course of employment because her supervisor gave permission for her to travel to work as the passenger of a coworker. The fact that her supervisor assented to her mode of travel to work when her vehicle would not start, does not change the established criteria for an injury sustained in the performance of duty under the Act. It merely suggests that the employer wanted appellant to come into work at the employing establishment that day, even though her personal vehicle was temporarily unavailable for her mail delivery duties. Appellant failed to establish that the motor vehicle accident arose out of and in the course of her employment. The Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury while in the performance of duty on January 20, 2009.

[10] *Supra* note 6.

[11] *See, e.g., Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001) (coverage is extended when the employee is in the vehicle driving to and from work because she is required to take her vehicle with her to perform her regularly assigned duties. It is at the point that she enters her vehicle that she would be considered to be in the performance of her duties).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2010 is affirmed.

Issued: February 18, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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