United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 13-490**
	)	**Issued: August 6, 2013**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Pembroke Pines, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 27, 2012 appellant filed a timely appeal of the November 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her compensation claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 July 22, 2012.

On appeal, appellant states that her supervisor approved her personal time with family in Orlando, Florida and that she took the most direct route back to her duty station as she would have had to pass through Lake City from both Orlando and Jacksonville to reach Panama City.

[1] 5 U.S.C. § 8101 *et seq.*

She contends that, once she started the return drive from Orlando to Panama City, her personal deviation was completed and she resumed the performance of duty.

FACTUAL HISTORY

On July 27, 2012 appellant, then a 49-year-old mission support specialist, filed a traumatic injury claim alleging that at 5:45 p.m. on July 22, 2012 she sustained cuts to her right foot and left shoulder and bruises to her left arm, back and on both legs as a result of a motor vehicle accident on Interstate 75, near Nash Road, south of Lake City, Florida. She was traveling back from her temporary-duty assignment in Jacksonville when a white pickup truck ran her off the road. Appellant lost control of her vehicle and then rolled over the guardrail. On the claim form, her supervisor indicated that appellant was injured in the performance of duty.

In an August 6, 2012 letter, OWCP advised appellant that the evidence submitted was not sufficient to establish that she was injured while in the performance of duty. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated September 14, 2012, explaining her travel status on July 22, 2012. She noted that she was driving back to Panama City, Florida "from a TDY at the Jacksonville Branch" when the July 22, 2012 motor vehicle accident occurred. Appellant submitted a copy of the accident report and hospital reports from Lake City Medical Center dated July 22, 2012 and reports dated September 12 to 20, 2012 from Dr. Sylvia M. Smith, a chiropractor. Based on x-rays, Dr. Smith diagnosed cervical, thoracic and lumbar spine subluxation, cephalgia, myalgia/myositis, hyperextension-flexion injury, thoracic nerve injury and lumbosacral sprain/strain.

In a July 31, 2012 statement, Mark Trotter, appellant's supervisor, noted that appellant went to Jacksonville on Wednesday, July 18, 2012 to conduct training and departed on Friday, July 20, 2012. He stated that she went to visit her sister in Orlando on Saturday, July 21, 2012, which was a personal day and then departed Orlando on Sunday, July 22, 2012 for return travel to Panama City.

Appellant submitted an expense report, which indicated that she was in travel status on July 18 and 21, 2012 for a temporary-duty assignment in Jacksonville, Florida to provide training.

In a September 26, 2012 report, Dr. Preston Wilson, a Department of the Air Force family health clinic physician, noted that appellant was involved in a motor vehicle accident on July 22, 2012. He saw her on August 2 and 7, 2012 and diagnosed neck and back pain and postconcussive syndrome. Dr. Wilson opined that appellant's musculoskeletal and neurological symptoms were a result of the motor vehicle accident.

In an October 18, 2012 letter, OWCP requested additional evidence and afforded appellant 30 days to submit the requested information.

Appellant submitted an October 22, 2012 narrative statement reiterating her travel status and adding that the accident occurred on a "direct route" to Panama City. She also submitted notification that she was paid for the temporary-duty assignment.

By decision dated November 8, 2012, OWCP denied the claim finding that appellant was not in the performance of duty at the time of injury.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] 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.[3] 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 his or her employer's business, at a place where he or she may reasonably be expected to be in connection with his or her employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[4]

FECA provides coverage 24 hours a day when the employee is on travel status, a temporary assignment or a special mission and is engaged in activities essential or incidental to such duties. When an employee deviates from the normal incidents of the trip and engages in activities, personal or otherwise, that are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of FECA and any injury occurring during these deviations is not compensable.[5] It is OWCP's burden, however, to show that such a deviation occurred.[6]

Larson, in his treatise, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments: Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown.[7] At Chapter 17, Larson states that an identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation was so small as to be disregarded as insubstantial.[8] Larson notes that, although employees are free to go and do what they please after a last business chore is completed, there are employees who,

[2] 5 U.S.C. § 8102(a).

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

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] *See Janice K. Matsumura*, 38 ECAB 262 (1986).

[6] *See John M. Byrd*, 53 ECAB 684 (2002).

[7] A. Larson, *The Law of Workers' Compensation*, § 25.01 (2009); *see also Susan A. Filkins*, 57 ECAB 630 (2006); *Lawrence J. Kolodzi*, 44 ECAB 818 (1993). Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable. *See id.*

[8] *Id.* at Chapter 17.

had they gone straight home, would have been entitled to have their homeward journey found compensable, but interpolated so many personal diversions between the last business act and the journey home that the ultimate journey home loses its business character and FECA coverage.[9]

ANALYSIS

Appellant appeals OWCP's determination that she was not in the performance of duty on July 22, 2012 when she was injured during a motor vehicle accident. She states that her supervisor approved her personal time with family in Orlando and that she was taking the most direct route back to her duty station and had to pass through Lake City from both Orlando and Jacksonville to reach Panama City. Appellant contends that, once she started the drive from Orlando towards Panama City, her personal deviation was completed and she resumed the performance of duty. In *Ronnie E. Banks*,[10] the Board held that the employing establishment's approval of a particular lunch stop was immaterial to the issue of performance of duty as the employee was engaged in a personal deviation. Appellant's supervisor's approval of her trip to Orlando is immaterial to the issue in this case. The issue on appeal is whether the July 22, 2012 injury occurred in the performance of duty.

In *George D. Cockerham*,[11] an employee was injured driving back to his temporary-duty assignment after he returned home to replace a hot water heater. The trip he made from his duty station in Wichita Falls, Texas to Alamogordo, New Mexico was not in pursuance of an activity directed by his employer nor did his employing establishment give rise to the necessity for that trip. The origin of the injury was found solely in his visit to Alamogordo, made for personal reasons to install a hot water heater in his home. The Board found that the mere fact that the employee was on his way back to Wichita Falls when the accident occurred was insufficient to bring him under the protection of FECA.[12] The trip to and from Alamogordo was in no way essential or incidental to the employee's attendance of his mechanical training in Wichita Falls and, therefore, his injuries did not occur in the performance of duty.

Similar to *Cockerham*, the Board finds that the origin of appellant's injury was found in her visit to Orlando, which was made for personal reason. Appellant drove from her duty station in Panama City to Jacksonville on July 18, 2012 for a temporary-duty assignment. Her travel days were Wednesday, July 18 and Saturday, July 21, 2012. It is not disputed that upon leaving her temporary-duty assignment on Friday, July 20, 2012 appellant did not return home. Appellant left from the location of the temporary duty in Jacksonville and went to Orlando for a personal reason, to visit her sister. She was involved in a motor vehicle accident on Sunday, July 22, 2012 at a location on Interstate 75, near Nash Road, south of Lake City. Appellant was injured at a location where she had not required the main business route and on a day when she was not scheduled to work. The mere fact that she was on her way back to her duty station in Panama City when the accident occurred is insufficient to bring her under the protection of

[9] *Id.* at § 17.02D citing to *Dooley v. Smith's Transfer Co.*, 57 A.2d 554 (N.J. Dept. of Labor 1948).

[10] Docket No. 01-96 (issued July 19, 2001).

[11] 49 ECAB 678 (1998).

[12] *Id.*

FECA.[13] The trip to and from Orlando was in no way essential or incidental to appellant's attendance of her temporary-duty assignment in Jacksonville. Therefore, she was not in the performance of duty at the time of the injury and is not entitled to compensation in this case.

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 has not met her burden of proof to establish that she sustained an injury in the performance of duty on July 22, 2012.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[13] *See supra* note 11.