United States Department of Labor
Employees' Compensation Appeals Board

I.F., Appellant	)	
and	)	**Docket No. 12-192**
	)	**Issued: September 26, 2013**
DEPARTMENT OF THE INTERIOR, U.S. FISH & WILDLIFE SERVICE, Elizabeth, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 2, 2011 appellant, through counsel, timely appealed the July 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 sustained an injury in the performance of duty on July 2, 2004.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case was previously before the Board.[2] Appellant, a 60-year-old former wildlife inspector, claimed to have injured her neck and back on July 2, 2004 while loading the trunk of her car with work materials weighing in excess of 30 pounds. She planned to review the materials over the weekend. In an August 16, 2006 statement, appellant indicated that she regularly took work home, in the form of notepads and notebooks, in order to recopy and file new information into her personal reference manuals. She took copious notes due to a "learning problem" and "significant memory impairment." Appellant stated that she transcribed her various work notes at home because she "was not provided time at work for this purpose."

Appellant's injury reportedly occurred at 3:15 p.m. in the parking lot outside her office building. She regularly worked weekdays from 8:00 a.m. to 4:30 p.m., but that Friday, July 2, 2004, the employing establishment authorized an early departure for all employees due to the upcoming July 4th holiday weekend. On that day appellant received administrative leave and was effectively off duty as of 2:30 p.m. on July 2, 2004. She indicated that she was in a staff meeting from 8:30 a.m. to 1:30 p.m. At approximately 2:30 p.m. appellant requested permission to work beyond 2:30 p.m., but her supervisor denied the request and appellant was "promptly ordered out of the office." She organized and packed her work notes and work-related materials to take home with her. Utilizing a hand cart, appellant then made two trips from her fifth floor office carting work materials to her vehicle located in the ground-level outdoor parking lot. The injury reportedly occurred on her third trip to the parking lot as she twisted to load the last of her work materials into her vehicle.

Appellant had previously injured her neck and back in a June 11, 1993 motor vehicle accident. She also has an accepted occupational disease claim for aggravation of cervical and lumbosacral spondylosis, which arose on or about July 18, 2000. Appellant last worked for the employing establishment on July 2, 2004. She received disability retirement effective October 8, 2004.

OWCP denied appellant's July 2, 2004 traumatic injury claim on the basis that she was not authorized to remain on premises after 2:30 p.m., and her presence in the parking lot 45 minutes after she had been dismissed for the day was unreasonable. It also found that she had not established that she was performing an essential element or a required task of her job. Moreover, the record did not establish that appellant was required to take work home.

In a February 17, 2009 decision, the Branch of Hearings & Review affirmed OWCP's denial of the claim. The hearing representative found that, while the evidence supported that appellant was loading paperwork into her car, the record did not support that she sustained a twisting injury or that she loaded a cart into the trunk of her vehicle. Additionally, the hearing representative indicated that appellant asked but was not permitted to work beyond 2:30 p.m. on July 2, 2004, and that she was to have left the office 45 minutes prior to the claimed injury.

[2] Docket No. 09-1452 (issued February 22, 2010).

By decision dated February 22, 2010, the Board set aside the hearing representative's decision and remanded the case for further factual development regarding whether appellant's alleged injury occurred on the employing establishment's premises. The record at the time did not clearly establish that the parking lot was part of the employing establishment premises. The Board specifically instructed OWCP to "obtain additional information from both appellant and the employing establishment regarding access, ownership and control of the parking lot where the July 2, 2004 injury allegedly occurred." The Board's February 22, 2010 decision is incorporated herein by reference.

Since the Board's last decision, OWCP determined that the parking lot was in fact part of the employing establishment premises. It also accepted that the July 2, 2004 parking lot incident occurred as alleged, and that appellant sustained an injury as a result of the incident. OWCP denied her claim because she was not in the performance of duty when the injury occurred.

In a December 27, 2010 decision, the Branch of Hearings & Review found that, at the time of the July 2, 2004 incident, appellant was not acting within the scope of her employment. The hearing representative further found that appellant's injury did not occur within a reasonable time after the end of her work shift. Appellant was injured 45 minutes after she had been dismissed for the day. The hearing representative also noted that the employing establishment had repeatedly advised appellant that she was not to carry or lift work materials. Furthermore, the evidence did not establish that the employing establishment required appellant to take materials home. Lastly, the hearing representative found that the evidence did not establish that the employing establishment derived any substantial benefit from appellant taking work materials home for "personal reasons."

On reconsideration, the claims examiner issued a July 22, 2011 merit decision that similarly found that appellant was not in the performance of duty when she injured her neck and back on July 2, 2004.

LEGAL PRECEDENT

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4] Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.[5]

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Id.*

[5] *See Robert G. Morris*, 48 ECAB 238 (1996).

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."[6] An injury must occur at a time when the employee may reasonably be said to be engaged in his or her master'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.[7] For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.[8] Coverage also extends to a "reasonable interval" before or after the work shift while the employee is on the premises and engaged in preparatory or incidental acts.[9] The mere fact that an injury occurs on the employing establishment premises following a reasonable interval after working hours is not sufficient to bring the injury within the performance of duty.[10] The employee must also show that the injury resulted from some risk incidental to the employment and that the employing establishment received a substantial benefit from the activity.[11]

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against each and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not attach merely upon the existence of an employee/employer relationship.[12] Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found prerequisite in workers' compensation law of rising out of and in the course of employment.[13] In addressing this issue the Board has stated in the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment or the risk is incidental to the employment or to the conditions under which the employment is performed.[14]

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[6] 5 U.S.C. § 8102(a).

[7] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 423-24 (2006).

[8] *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

[9] *Cemeish E. Williams*, 57 ECAB 509, 512-14 (2006).

[10] *Id.* What constitutes a "reasonable interval" before or after a work shift depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the activity. *Id.* at 514.

[11] *Id.*

[12] *Bruce A. Henderson*, 39 ECAB 692 (1988); *Minnie M. Huebner*, 2 ECAB 20 (1948).

[13] *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

[14] *Barbara D. Heavener*, 53 ECAB 142 (2001); *Angela J. Burgess*, 53 ECAB 568 (2002).

ANALYSIS

OWCP has accepted that appellant sustained injury to her neck and back on July 2, 2004 at 3:15 p.m. after making several trips to and loading various work materials into her vehicle, which was parked on the employer's premises.

When her injury occurred, appellant was in the process of leaving work for the day. Although her regular tour of duty would have ended at 4:30 p.m., the employing establishment in light of the upcoming holiday weekend and unbeknown to her until that time dismissed the office early that Friday afternoon. Appellant and her coworkers were permitted to depart at 2:30 p.m. on July 2, 2004. She wanted to work beyond 2:30 p.m., but her supervisor denied her request. The injury occurred 45 minutes after the end of appellant's tour of duty. The hearing representative found that appellant's 45-minute delay in departing the premises was unreasonable, but she offered no rationale for this finding. The senior claims examiner ostensibly affirmed the "reasonable interval" finding on reconsideration, but she also failed to provide an explanation as to why it was unreasonable for appellant to have remained on premises 45 minutes after being dismissed for the day.

The Board finds that appellant's presence in the parking lot 45 minutes after her dismissal was not unreasonable. Whether the injury occurred within a "reasonable interval" after appellant's work shift depends on the length of time involved, as well as the circumstances occasioning the interval and the nature of the activity.[15] A 45-minute delay by itself is not inherently unreasonable.[16] In the case of *R.A.*, the appellant clocked out of work 45 minutes after his scheduled fixed hours and slipped in the employing establishment's parking area. He had clocked out, but returned to his workstation to complete work on pay statements regarding vehicle repairs. The appellant wanted to finish the work because he was retiring in 10 days. "The Board, finding it within the performance of duty, reasoned that it was not simply the time interval in and of itself to establish entitlement to benefits of compensability, but also that it had to establish a concomitant requirement of an injury arising out of the employment, and that some factor of employment caused or contributed to the claimed injury.[17]

In the instant case, appellant explained that she worked until 2:30 p.m. and then began to pack her work materials, which she intended to take home and review over the July 4, holiday weekend. She then made three trips to the parking lot. Appellant indicated that her office was on the fifth floor and that she took the elevator down to the ground level and exited the building to the parking lot to her vehicle. She provided a sketch of where her car was located in the parking lot and its proximity to the building and included an inventory of the materials she had loaded into her vehicle. Taking into account the time to pack her work materials, the number of trips appellant made from her fifth floor office to the parking lot and back, as well as the time spent waiting for the elevator, 45 minutes is not an unreasonable amount of time for appellant to

[15] *Id.*

[16] *See R.A.*, 59 ECAB 581, 585-86 (2008) (FECA coverage extended to a slip and fall incident in the employing establishment's parking lot approximately 45 minutes after the employee "clocked out").

[17] 59 ECAB 581 (2008).

have remained on premises after the conclusion of her shortened workday. The Board finds that given the time of day when she was notified of the early release and the fact that she was taking work-related materials from the fifth floor to her vehicle departing for the day, appellant was engaged in activities incidental to her employment. OWCP accepted that appellant was injured while loading various work materials into her vehicle. Accordingly, the Board finds that appellant's July 2, 2004 injury occurred within a reasonable interval after the end of her work shift while she was engaged in activities incidental to her employment.

The next question is whether the employing establishment received a substantial benefit from the activity.[18] The hearing representative found that the evidence did not establish that the employing establishment derived any substantial benefit from appellant taking work materials home for "personal reasons." It is difficult to fathom how taking work notes home to transcribe her work notes while off-duty is purely "personal" in nature. While she may not have been required to take work-related materials home with her that weekend, there is no evidence indicating that her employer expressly prohibited her from removing such materials from her office and taking them home for further review. The undisputed reason for her to take these materials home was for her to transcribe her work notes. She claimed she did this routinely and it assisted her in her day-to-day job duties and responsibilities. Presumably, this activity would better prepare appellant to discharge her employment duties, which benefits both her and the employing establishment. Although the activity was not specifically mandated by the employing establishment, clearly the employing establishment would derive a substantial benefit from appellant's efforts to distill and organize her work-related notes and materials.

The facts in this case can be contrasted with the facts of *William W. Knispel*.[19] In that case, the appellant left work 45 minutes after his shift ended and fell while riding his bicycle on the employing establishment's premises to a bus stop. The appellant argued that he left later than usual due to a recent surgery. The Board reasoned that given the 45 minute interval and his activity on the premises riding his bicycle in no way furthered the employing establishment's business and was nothing more than a matter of personal convenience. Similarly in *Terry L. Faulkner*,[20] the Board found that appellant's arrival and subsequent injury on the employing establishment's premises 25 minutes before her regularly scheduled shift was not compensable. The appellant argued that she arrived early to get a good parking space, engage in Bible study and get a cup of coffee. As no incidental activity related to her employment was proffered, the Board found that her early arrival was personal in nature and affirmed the denial of benefits.

In the case at bar, the Board finds that appellant's activity was a significant reason related to her work and thus was a benefit to the employing establishment.

Appellant was injured loading her personal vehicle with work-related materials while preparing to leave the employing establishment premises at the end of her work week on an unexpected shortened workday. For an employee with fixed hours and a fixed workplace, an

[18] *Cemeish E. Williams*, *supra* note 9.

[19] Docket No. 05-674 (issued July 25, 2005).

[20] Docket No. 09-154 (issued July 16, 2009).

injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.[21] In this particular instance, neither the timing of appellant's injury nor the type of activity she was engaged in at the time shall preclude coverage under FECA. Accordingly, the Board finds that she was in the performance of duty when she injured her neck and back on July 2, 2004.

CONCLUSION

Appellant establish that she sustained an injury in the performance of duty on July 2, 2004. Her claim is accepted for cervical and lumbar sprains and aggravation of cervical and lumbar spondylosis.

ORDER

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

Issued: September 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[21] *Roma A. Mortenson-Kindschi*, *supra* note 7.