

**United States Department of Labor
Employees’ Compensation Appeals Board**

Y.B., Appellant

and

**DEPARTMENT OF LABOR, WAGE & HOUR
DIVISION, Orlando, FL, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 16-0093
Issued: February 24, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 21, 2015 appellant filed a timely appeal from a May 13, 2015 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act¹ (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 June 19, 2014.

FACTUAL HISTORY

On June 27, 2014 appellant, then a 53-year-old wage and hour specialist, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in a motor vehicle accident on June 19, 2014 at 6:00 p.m. She indicated that she was riding in a taxi when it was rear-ended.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant described the injuries as strains to the neck, shoulder, back, right arm, and elbow, as well as headache, stomach ache, and nausea. The reverse of the claim form reported that she had “left her [temporary duty] status hotel to go out to dinner with her daughter.”

An employing establishment official submitted a July 1, 2014 letter asserting that appellant was not in the performance of duty at the time of the June 19, 2014 incident. The employing establishment argued that she was not on employing establishment premises and was not engaged in official off-premises duty.

By letter dated July 3, 2014, OWCP requested that appellant submit additional factual and medical evidence to support her claim. It requested that she respond to specific questions regarding the June 19, 2014 incident.

In a response received on July 27, 2014, appellant indicated that she was in travel status in Washington, DC on June 19, 2014. The staff meeting at the U.S. Department of Labor (Frances Perkins Building) ended at 5:00 p.m., and the incident occurred when she was travelling from her hotel to dinner. Appellant reported that the taxi was rear-ended on route to the restaurant. She indicated that she was scheduled to return to Orlando, Florida on June 20, 2014. The record contains maps indicating that her hotel (at 1315 16th Street, NW) was two miles from the U.S. Department of Labor, and the intended restaurant (at 300 Tingey Street, SE) was 1.8 miles from the U.S. Department of Labor.

An employing establishment workers’ compensation coordinator submitted an August 4, 2014 e-mail asserting that appellant was not in the performance of duty. The specialist argued that the incident took place after work hours, while in a taxi on her way for dinner with her daughter a couple of miles away from her hotel and the U.S. Department of Labor, and therefore was independent travel to a nonwork-related event.

By decision dated August 6, 2014, OWCP denied appellant’s claim for compensation. It found that she was not in the performance of duty at the time of the accident on June 19, 2014. According to OWCP, appellant was engaged in a recreational activity and “diversions for personal reasons” are not incidental to temporary duty or travel status.

On August 21, 2014 appellant requested a hearing before an OWCP hearing representative. A hearing was held on March 10, 2015. Appellant testified that she had travelled to Washington, DC for a weeklong training conference at the U.S. Department of Labor (200 Constitution Ave., NW). Meetings were held daily and normally ended about 5:00 p.m. According to appellant, her daughter was a naval officer and she worked near the Navy Yard. They made plans to meet for dinner at a restaurant, and the incident occurred while she was on her way from the hotel to the restaurant.

By decision dated May 13, 2105, a hearing representative affirmed the August 6, 2014 decision. The hearing representative found that appellant travelled 3.8 miles to the area of the Navy Yard to have dinner with her daughter. According to the hearing representative this “clearly constituted a distinct departure on a personal errand rather than just eating in a restaurant.”

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death 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 Arising in the course of employment relates to the elements of time, place, and work activity.⁴ An injury is stated to arise in the course of employment when it takes place within the period of the employment, at a place where the employee reasonably may be and while they are fulfilling their duties or are engaged in doing something incidental thereto.⁵ Arising out of employment relates to the causal connection between the employment and the injury claimed.⁶

Under FECA, an employee on travel status or a temporary-duty assignment or special mission for her employer is in the performance of duty and therefore under the protection of FECA 24 hours a day with respect to any injury that results from activities essential or incidental to her special duties.⁷ Examples of such activities are eating,⁸ returning to a hotel after eating dinner and engaging in reasonable activities within a short distance of the hotel where the employee is staying.⁹ However, when a claimant voluntarily deviates from such activities and engages in matters, personal or otherwise, which are not incidental to the duties of his or her temporary assignment, they cease to be under the protection of FECA. Any injury occurring during these deviations is not compensable.¹⁰ Examples of such deviations are visits to relatives or friends while in official travel status,¹¹ visiting nightclubs and bars,¹² skiing at a location 60

² 5 U.S.C. § 8102(a).

³ *R.A.*, Docket No. 07-814 (issued June 19, 2008); *Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *V.O.*, 59 ECAB 500 (2008); *R.S.*, 58 ECAB 660 (2007).

⁵ *L.K.*, 59 ECAB 465 (2008); *D.L.*, 58 ECAB 667 (2007).

⁶ See *Charles Crawford*, 40 ECAB 474 (1989) (the phrase arising out of and in the course of employment encompasses not only the concept that the injury occurred in the work setting, but also the causal concept that the employment caused the injury); see also *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁷ *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O'Connor*, 4 ECAB 21 (1950).

⁸ *Michael J. Koll, Jr.*, 37 ECAB 340 (1986); *Carmen Sharp*, 5 ECAB 13 (1952).

⁹ *Ann P. Drennan*; *Janet Kidd (James Kidd)*, *supra* note 7; *Theresa B.L. Grissom*, 18 ECAB 193 (1966).

¹⁰ *Karl Kuykendall*, 31 ECAB 163 (1979).

¹¹ *Ethyl L. Evans*, 17 ECAB 346 (1966) (travelling to a friend's house to spend the night was a deviation from the course of employment); *Miss Leo Ingram*, 9 ECAB 796 (1958) (driving 200 miles to visit relatives was a deviation).

¹² *Conchita A. Elefano*, 15 ECAB 373 (1964).

miles from where an employee is undergoing training,¹³ and taking a boat trip during nonworking hours to view a private construction site.¹⁴

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 represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.¹⁵

ANALYSIS

The factual background of the present case is relatively straightforward. Appellant was in travel status for a conference at the U.S. Department of Labor (the Frances Perkins Building) in Washington, D.C. She had finished the daily meetings on June 19, 2014, returned to her hotel, and had taken a taxi to meet her daughter for dinner at a local restaurant. On route to the restaurant, the taxi cab is involved in a motor vehicle accident and appellant has alleged injuries resulting from the accident.

OWCP found that appellant was not in the performance of duty because her trip to the restaurant was a deviation on a personal errand that took her out of coverage under FECA. The hearing representative based his finding on two factors: (1) that appellant was meeting her daughter for dinner, and (2) the restaurant was approximately 3.8 miles from the hotel and located near where the daughter was employed. No citations to Board case law or other authority are provided to support the findings that travel to the restaurant in this case was a personal errand that takes appellant out of coverage under FECA.

As indicated above, an employee in travel status remains in the performance of duty at all times when engaged in activity that is reasonably incidental to the duties of the temporary assignment. The focus of the analysis is on the nature of the activity in which the employee was engaged, and in this case the nature of the activity is travel to a restaurant for dinner. This activity is clearly and unequivocally held to be incidental to the employee in travel status. The necessity of eating in a restaurant, and travel to and from the restaurant, is well established as incidental to travel status.¹⁶ The identity of any dinner companion does not change the nature of the activity.¹⁷ The finding of a personal errand with respect to relatives or friends while in travel

¹³ *Supra* note 10.

¹⁴ *Mattie A. Watson*, 31 ECAB 183 (1979).

¹⁵ *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

¹⁶ A. Larson, *The Law of Workers' Compensation* § 25.01 (2000); *William K. O'Conner*, *supra* note 7.

¹⁷ *See, e.g., Barbara E. Horan*, Docket No. 02-1283 (issued July 30, 2003) (the dinner companions were both friends and coworkers and appellant remained in the performance of duty).

status is based on the activity at the time of the incident, such as driving to or from the house of a friend or relative.¹⁸

The distance involved in this case is not of such significance that it would take appellant out of coverage. In *R.G.*,¹⁹ the claimant was injured in a motor vehicle accident four miles from the hotel while looking for a restaurant, and was held to be in the performance of duty. As the Board noted, the issue is one of reasonableness. In the present case, the restaurant was in Washington DC and less than four miles from appellant's hotel. There is no evidence this was an unreasonable distance to travel for dinner.

For the above reasons, the Board finds that appellant remained in the performance of duty at the time of the accident on June 19, 2014. Appellant was in travel status, engaged in an activity reasonably incidental to her travel status by taking a taxi to a local restaurant. There was no evidence of a deviation for personal reasons that would take her out of coverage under FECA. The case will be remanded to OWCP to properly consider the evidence of record to determine if appellant sustained an injury in the performance of duty. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that appellant was in the performance of duty at the time of the June 19, 2014 incident. The case is remanded for further development by OWCP.

¹⁸ *Supra* note 11. See also *George W. Stark*, 7 ECAB 275 (1954) (a trip from his fiancée's home was a personal errand that took the claimant out of coverage under FECA).

¹⁹ Docket No. 14-40 (issued August 12, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 24, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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