

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

N.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Columbus, OH, Employer)

**Docket No. 16-1215
Issued: December 8, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 23, 2016 appellant, through counsel, filed a timely appeal from an April 25, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 November 19, 2012.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as presented in the prior appeal are hereby incorporated by reference. The relevant facts are as follows.

On November 19, 2012 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a head, neck and shoulder injury while she was using the restroom at a McDonald's restaurant and was hit in the head by an unfastened metal door of a toilet paper dispenser. The Form CA-1 noted the time of injury as 11:00 a.m.

OWCP received a January 13, 2013 employing establishment form entitled Notice of Potential Third-Party Claim, wherein appellant stated that on November 19, 2012 she sustained injury to her head and neck in a restroom at a McDonald's restaurant.

By letter dated March 1, 2013, the employing establishment reported that appellant was off duty from November 19 to 21, 2012, due to the injury and was thereafter returned to work with restrictions. It also noted that appellant's appointment as a transitional employee (TE) carrier expired on January 16, 2013 and she was no longer employed by the employing establishment. The employing establishment controverted the claim finding that appellant had failed to establish fact of injury.

In a June 28, 2013 OWCP telephone call memorandum, the employing establishment reported that appellant was outside the performance of duty when she deviated from her assigned route. It noted that the McDonald's restaurant was not on her route or an authorized stop for breaks.

By decision dated July 8, 2013, OWCP denied appellant's claim as the evidence submitted was insufficient to establish an injury in the performance of duty. It found that she had deviated from her assigned route to use the McDonald's restroom. OWCP noted that the evidence of record failed to establish that the injury occurred during the course of employment and within the scope of compensable work factors because the location of the claimed injury was neither on appellant's assigned route nor designated as a permitted destination for personal relaxation or comfort.

On July 11, 2013 appellant, through counsel, requested a hearing before an OWCP hearing representative.

In a July 2, 2013 narrative statement, appellant related that she had sustained her injury at the McDonald's when she stopped to get a drink and use the restroom. While she was in the stall, she yanked on the toilet paper dispenser and the steel door fell on her head. Appellant provided different maps showing the location of her assigned routes, the location of the McDonald's restaurant, the location of the employing establishment and the travel paths used.

³ Docket No. 14-1092 (issued February 26, 2015).

A telephone hearing was held on November 25, 2013. At the hearing, appellant testified that her city carrier duties entailed driving an employing establishment vehicle to her route, dismounting and walking to deliver the mail. She responded “yes” to the question: “Do you have authorized rest or break places.” Appellant further responded “yes” to the question: “Are they identified on each route?” She claimed that she stopped at that McDonald’s because it was a rest area for the first part of her route. Appellant stated that, on the day in question, she had been assigned two routes and that she normally received her route assignments from the employing establishment on the morning of her shift. On November 19, 2012 she was assigned one hour on Route 32 and five hours on Route 60. Appellant stated that after finishing the one hour of mail delivery assigned for Route 32, she stopped at the McDonald’s restaurant to use the restroom before heading out to deliver mail on Route 60. After purchasing a drink in the McDonald’s restaurant, she used the restroom where she sustained the injury. Appellant claimed that the McDonald’s restaurant was an authorized rest area and that it was located between her two assigned routes. She stated that she would have to pass the McDonald’s to get from Route 32 to Route 60. Appellant stated that she informed her supervisor, Pamela Howell, immediately following the incident. She further explained the circumstances surrounding the incident and her subsequent medical treatment.

By letter dated December 20, 2013, the employing establishment controverted the claim and contended that appellant had deviated from her route when using the McDonald’s restroom. It provided a December 17, 2013 e-mail correspondence from appellant’s supervisor, Ms. Howell, who stated that the McDonald’s restaurant was an assigned lunch location but not an authorized break location. Moreover, she noted that the injury occurred prior to the lunch period. Ms. Howell stated that, although the McDonald’s restaurant was between appellant’s two assigned routes, so also was the employing establishment which was at least the same distance as the McDonald’s.

By decision dated February 10, 2014, OWCP’s hearing representative affirmed the July 8, 2013 OWCP decision finding that appellant was not in the performance of duty on November 19, 2012 as the McDonald’s restroom was not an authorized break location and her stop there constituted a personal mission and could not be characterized under the personal comfort doctrine. It further found that she had deviated from her assigned route to use the McDonald’s restroom because the same break could have been taken at the employing establishment which was a location equidistant to the McDonald’s.

By decision dated February 26, 2015, the Board remanded OWCP’s February 10, 2014 decision finding that it had failed to adequately develop the evidence to determine whether appellant was in the performance of duty when she sustained her November 19, 2012 traumatic injury. On remand, the Board instructed OWCP to request appellant’s supervisor to clarify the statements made in her December 17, 2013 e-mail regarding the employing establishment’s policy pertaining to breaks and to determine the policy of the employing establishment regarding breaks.

On remand, by letters dated April 24, 2015, OWCP requested additional factual evidence from both appellant and the employing establishment as to the policy regarding the use of off-premises facilities for restroom breaks.

By letter dated May 4, 2015, appellant reported that the employing establishment had not provided her with a policy or list of authorized or unauthorized off-premises facilities for restroom breaks.

By letter dated May 7, 2015, Pamela Howell, appellant's supervisor, reported that carriers had assigned lunch and break locations, that McDonald's was not an assigned break location for appellant's route, and that appellant should have used the restroom at the employing establishment facility.

By letter dated May 15, 2015, the employing establishment further responded to the April 24, 2015 development letter. It reiterated that appellant was not authorized to take a restroom break at the McDonald's location on her assigned route. The employing establishment further explained that she was not on a lunch break and, at the time of the incident, was on a personal mission, as evidenced by purchasing a drink during her unauthorized stop. It reiterated that, after appellant had completed carrying Route 32, she should have stopped at the postal facility to use the restroom instead of McDonald's as they were equidistant. The employing establishment explained that, according to Ms. Howell, all carriers are informed of the assigned locations for restroom breaks and lunch breaks for each route. It noted that appellant had worked at that particular employing establishment facility for almost two years, since February 12, 2011, and was well aware of the assigned locations for restroom breaks, break points, and lunch locations.

In another letter dated June 17, 2015, the employing establishment referenced the November 25, 2013 hearing where appellant testified that she was assigned an hour's delivery on Route 32 and stopped at the McDonald's after finishing this route prior to the start of her next route. It provided a copy of page 1 from the handbook M-41, City Deliver Carriers Duties and Responsibilities, Section 112.2, Diligence and Promptness which noted, "Return to the delivery unit immediately on completion of assigned street duties and promptly clock in on arrival." The employing establishment argued that appellant should have returned to the duty station after finishing Route 32 and should not have stopped at the McDonald's as she was not on a lunch break.

By decision dated June 17, 2015, OWCP denied appellant's claim finding that she was not in the performance of duty on November 19, 2012 while stopping at the McDonald's to use the restroom. It noted that she had deviated from her assigned route and failed to use an authorized off-premises location for her restroom break. OWCP further noted that the evidence of file established that her duty station was approximately the same distance from the McDonald's where the injury occurred and the employing establishment established that upon completion of her first assigned route she should have returned directly to her duty station.

By letter dated June 30, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

A hearing was held on February 11, 2016. At the hearing, counsel argued that OWCP failed to properly follow the Board's remand instructions as the employing establishment had not provided the written policy pertaining to off-premises employees using restrooms. Rather, the employing establishment provided an unsubstantiated statement reporting that McDonald's was

not an assigned break location. Counsel further noted that the policy referenced by the employing establishment, suggesting that appellant should have returned to the duty station after completing her route, was inapplicable because she had yet to complete her street duties.

Appellant testified that she was assigned an hour on Route 32 and stopped at the McDonald's to use the restroom before starting the next five hours on assigned Route 60. She explained that she would not have been required to stop at the postal facility following the completion of Route 32 because mail for both routes had previously been loaded into her truck at the start of her day. Appellant further testified that her route often changed as her position served as a substitute for absent carriers. She reported that she was not assigned stopping points on every one of those routes and had never been given anything in writing about where she could or could not stop.

Appellant noted:

“Restroom breaks was anywhere you see. It can be a doctor's office; you ask to use the restroom. Restroom breaks are where, you know, of course in an emergency, it's wherever you're at that's close enough to get to a restroom. I mean we used – customers let us use their restrooms all the time in case of an emergency which this was for us to use the restrooms.”

The hearing representative summarized: “[s]o basically on any route if you needed to use the restroom you could ... you would use the most local restroom?” and appellant responded in the affirmative.

Appellant stated that she stopped at the McDonald's rather than the postal facility because often times the postal facility doors would be locked after the carriers left in the morning and would not be unlocked until 3:00 p.m. when the carriers were returning at the end of their shift. She reported that she did not know the pin to access the building and would often have to bang on the doors to gain access midday. Appellant further stated that the postal facility did not have any vending machines to grab a water or cup of coffee. For the reasons noted, many of the carriers would stop at the McDonald's for a drink or restroom break. Appellant stated that carriers could stop for restroom breaks anywhere nearby, especially when it could be urgent. Counsel for appellant argued that it was unclear why McDonald's would be approved for lunch and not for breaks, and that the employing establishment failed to provide any policy regarding stopping points or submit their policy in writing.

The employing establishment noted that on the date of injury, appellant was assigned to carry routes 1564-A and 2932. Time records indicated that she left the Northland Post Office, her duty station, to carry her route at 9:55 am. It noted that appellant alleged that she was only an hour into carrying Route 32 when she stopped at McDonald's to get a drink and use the restroom. The manager of the Northland Post Office reported that the beginning of Route 32 was approximately two miles from McDonald's and thus, the postal facility was closer than the McDonald's. The employing establishment argued that, as appellant had only left the postal facility at 9:55 a.m. and stated that the injury occurred at 11:00 a.m., she was at/near the beginning of the route and deviated off the assigned route back towards the postal facility, but chose to go to McDonald's instead of the postal facility. It reiterated Ms. Howell's statement

that McDonald's was not an authorized break location, that the postal facility was closer than the McDonald's restaurant, that appellant was not on a scheduled break, and that she was not on her lunch break. The employing establishment explained that appellant had been employed with the employing establishment at different facilities for a total of more than four years and was well aware of postal policy for assigned stopping points and breaks as a TE Carrier. It reported that appellant was given verbal instructions on postal policy for assigned stops for breaks and lunch at each postal facility in which she had been assigned.

The employing establishment also controverted appellant's statement that the Northland Carrier Unit doors were pinned shut stating that she did not know how to gain access. It explained that all carriers knew where the pin code was written outside the building to gain access to the building. Rather, the employing establishment argued that appellant voluntarily chose to deviate two miles from her assigned route to go to McDonald's for a drink. It referenced her testimony that she stopped at McDonald's for a break, snack, or cup of coffee as there were no vending machines at the postal facility. The employing establishment noted that, while there were no vending machines at the postal facility, there was a Speedway gas station/market right across the street from the Northland Post Office. As such, if appellant had wanted to get a drink, she could have accessed that business to do so. Instead she drove to her assigned route, performed less than an hour of delivery, and then decided to drive back towards the postal facility and use the McDonald's.

By decision dated April 25, 2016, the hearing representative affirmed OWCP's June 17, 2015 decision finding that appellant was not in the performance of duty on November 19, 2012. It noted that the employing establishment had reported that McDonald's was not an authorized break location and that appellant should have returned to the employing establishment for a restroom break as it was just as close. The hearing representative further noted that, while appellant had recently claimed that the employing establishment had not provided any policy or discussion regarding off-premises facilities or lists of authorized/unauthorized locations for restroom breaks, in prior testimony appellant had acknowledged that each route had assigned routes. Appellant disputed that McDonald's was not an authorized rest for her route.

The hearing representative gave weight to the employing establishment's explanation that McDonald's was an authorized lunch break but not a rest stop, that appellant had worked at the same station for almost two years and was well aware of the routes and policies regarding rest breaks, that there was an appropriate rest stop at the employing establishment as close or closer than the McDonald's, and that, if she had needed a drink, she could have obtained one from the facility across from the employing establishment. She found that the evidence failed to establish that the McDonald's was an authorized break location for either route, or that appellant was allowed a formal break after just one hour of delivery and, as such, appellant was not in the performance of duty at the time of the injury.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. 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.⁴

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. "In the course of employment" deals with the work setting, the locale and time of injury whereas, "arising out of the employment," encompasses not only the work setting, but also a causal concept, that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, 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 or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁵

It is well established that employees who, within the time and space limits of their employment, engage in acts which minister to their personal comfort do not leave the course of employment.⁶ Even if the activity cannot be said in any sense to advance the employer's interest, it may still be in the course of employment if, in view of the nature of the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the conditions of that employment.⁷

Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation, is causally related to the accepted injury.⁸

ANALYSIS

Appellant filed a claim alleging that she sustained a traumatic injury on November 19, 2012 when she was hit in the head by a toilet paper dispenser in a McDonald's restroom. By decision dated April 25, 2016, OWCP determined that appellant was not in the performance of duty at the time of injury.

OWCP's decision determined that appellant's injury did not arise in the course of employment because her stop at a McDonald's constituted a personal mission. OWCP noted that, while the McDonald's was an specifically assigned lunch location on her route, it was not a specifically assigned break location. It noted that appellant should have stopped at the postal facility to use the restroom as the employing establishment reported that she had worked out of

⁴ *Supra* note 1 at § 8102(a).

⁵ *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty, Industrial Premises*, Chapter 2.804.4(a)(2) (August 1992).

⁷ *Conrad R. Debski*, 44 ECAB 381, 388 (1993).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

that station for almost two years, was given verbal instructions, and was well aware of the routes and policy regarding rest breaks.

In the present case, there is no factual dispute that appellant's injury took place within the period of her employment, *i.e.*, at a time when the employee may reasonably be said to be engaged in his or her master's business. There is no dispute that appellant was away from the employing establishment premises on her assigned mail delivery route. The issues presented, therefore, relate to the second and third prongs of the test, *i.e.*, whether appellant was at a place where he or she may reasonably be expected to be in connection with the employment and whether he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.

The employing establishment explained that there were specific authorized stops for rest breaks and lunch breaks for every mail route. Appellant conceded that fact in her testimony on November 25, 2013. Despite the earlier testimony, however, she later testified that there were no authorized rest break locations and that rest breaks were "anywhere you see." Appellant provided no evidence or corroborating testimony for her contention that on any route she could use the most local restroom. The Board finds that the evidence of record establishes that there were specified authorized rest break locations and McDonald's was not one of them. As appellant was not authorized to be at that location for a rest break, she would have been outside the performance of duty.

As to the third prong of the test, it is well settled that an employee who, within the time and space limits of employment, engages in an act that ministers to personal comfort, health, or necessity does not leave the course of employment.⁹ Even if the activity cannot be said in any sense to advance the employer's interest, it may still be in the course of employment if, in view of the nature of the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the conditions of that employment.¹⁰

While the Board recognizes the personal comfort doctrine is an essential part of working life, an employer can place reasonable restrictions on this policy.¹¹ In this case, it designated specific authorized rest locations for just that purpose on each mail carrier's route. Appellant chose to go outside of those restrictions and, as such, has taken herself out of the performance of duty. She had every right to attend to her personal comfort and use restroom facilities. The employing establishment prescribed, however, that the McDonald's was not an authorized break and that she could just as easily have returned to the employing establishment premises, which was equidistant from appellant's location, to minister to those comforts. The Board finds these restrictions by the employing establishment to be reasonable and consistent with the parameters of the personal comfort doctrine.

⁹ *Supra* note 7.

¹⁰ *Supra* note 8

¹¹ *Id.* at 389 (violations of express prohibitions relating to incidental activities, such as seeking personal comfort, as distinguished from activities contributing directly to the accomplishment of the main job, are an interruption of the course of employment.)

In *Donna Margareta*, the Board found that the employee had deviated from her mail delivery route when she traveled to a convenience store located over two miles from her route. The employee's personal preference for the more distant convenience store made the trip there a personal mission, rather than an activity incidental to her employment and placed her, at the time of the accident, at a place where she would not reasonably be expected in connection with her employment. Thus, the Board found that she was not in the performance of duty.¹²

In *Katina D. Edwards*, the Board found that the employee was not in the performance of duty when she traveled to a restaurant away from the route designated by the employing establishment for her lunch break. Her personal preference for the more distant restaurant made the trip there a personal mission, rather than an activity incidental to her employment and placed her, at the time of the accident, at a place where she would not reasonably be expected to be in connection with her employment.¹³

Consistent with *Margareta* and *Edwards*, the Board finds that appellant's trip to McDonald's was a personal mission, rather than an activity incidental to her employment and placed her, at the time of the accident, at a place where she would not reasonably be expected to be in connection with her employment. The fact that the distance to McDonald's was the same distance to the employing establishment does not change the result.

Appellant alleged that it was past practice for carriers to often go to McDonald's for breaks. However, she nor counsel provided any witness statements from other carriers validating this past practice or evidence that the past practice had been sanctioned by the employing establishment. In *Helen L. Gunderson*,¹⁴ the employee was injured off the premises of the employing establishment while on her way to get coffee on her morning break. The evidence established that coffee was not available on the premises and that her leaving the premises was in accordance with past practice and was done with the knowledge and consent of the employing establishment management. The Board held that the employee was in the performance of duty at the time of the injury.¹⁵ Contrary to *Gunderson*, appellant in the current case provided no evidence of past practice or evidence that the activity of going to that McDonald's had been sanctioned by the employing establishment.

The Board finds that appellant's stop at the McDonald's restaurant placed her outside the performance of duty when she sustained an injury on November 19, 2012.

CONCLUSION

The Board finds that appellant was not in the course of employment when she sustained an injury on November 19, 2012.

¹² 50 ECAB 220 (1999).

¹³ Docket No. 02-64 (issued September 16, 2002).

¹⁴ 7 ECAB 788 (1954).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge dissenting:

I respectfully record this dissent from the opinion of the majority. The issue is whether appellant sustained an injury in the performance of duty on November 19, 2012, as alleged. The majority finds that appellant was not in the performance of duty when the alleged injury occurred as she deviated from the course of her employment. I would find, however, that she was and would remand for development of the medical evidence to determine whether she actually sustained an injury and attendant disability causally related to the accepted employment incident.

It is well established that employees who, within the time and space limits of their employment, engage in acts which minister to their personal comfort, health, or necessity do not leave the course of employment.¹ Letter carriers are included in one of the four categories of "off-premises" employees recognized by OWCP in its procedures as, by the nature of their work, they perform service away from the employing establishment's premises.² An injury sustained on the employee's way to, from, or during a period of ministering to such needs is compensable as arising out of and in the course of employment, unless there is a departure so great that an intent to abandon the job temporarily may be inferred or unless the conduct cannot be considered

¹ *Michael E. Smith*, 50 ECAB 313 (1999); *see also* A. Larson, *The Law of Workers' Compensation* § 21 (2007).

² *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a)(1) (August 1992); *see also* *Thomas E. Keplinger*, Docket No. 93-2359 (issued April 12, 1995); *Donna K. Schuler*, 38 ECAB 273, 275 (1986).

an incident of the employment.³ Accidents occurring while an employee is going to or from toilet facilities or during the use of toilet facilities, are generally recognized as arising within the course of employment, subject only to the possible question of reasonableness of the means or the place chosen.⁴

After appellant completed the first half of her deliveries, she stopped in the McDonald's restaurant to use the restroom facilities. It was there that the alleged injury occurred. The employing establishment contended that appellant had deviated from her employment as she should have used the facilities at the employing establishment pursuant to its "established policies and procedures." To support this contention, it provided a spattering of letters and e-mails which purported to set forth the policies and/or procedures letter carriers were to follow for lunch and restroom breaks, noting that the McDonald's restaurant was not listed as an authorized restroom break location, but was instead listed as an authorized location for a lunch break. For instance, it provided a December 17, 2013 e-mail correspondence from appellant's supervisor who indicated that the McDonald's restaurant was an assigned lunch location, but not an authorized break location. However, this e-mail does not constitute contemporaneous evidence as it was drafted and sent over a year after the employment incident in question. No similar e-mails or documents existing at the time of incident were provided by the employing establishment. Moreover, the employing establishment did not provide any policy handbook or similar document setting forth these procedures as requested by the Board on prior appeal, nor did it include a listing of the authorized lunch and restroom break locations. The spattering of letters and e-mails setting forth policies and procedure were primarily based on appellant's supervisor's account of the purported customs at the employing establishment relative to restroom and lunch break locations. The supervisor relayed instructions that she indicated she verbally provided to appellant when she first began her employment. There was no policy provided as to when breaks should take place or the duration thereof, and no actual listing of restroom and lunch break facilities. Although the employing establishment did provide § 112.2 of the *Responsibilities of Carrier* highlighting § 112.29, this section discussed what a letter carrier should do following completion of delivery. The section relates in pertinent part: "Return to the delivery unit immediately on completion of assigned street duties and promptly clock in on arrival." However, this section is inapplicable in this case as appellant had only completed one half of her route, known as Route 32. Prior to completing her deliveries on the second half of her route, Route 60, is when she stopped in the McDonald's restaurant for a restroom break.

There is no dispute that this particular McDonald's restaurant was equidistant between both of appellant's delivery routes. A review of the maps provided reveals that appellant would have to pass the McDonald's restaurant before reaching the employing establishment when traveling to her second delivery route. Unlike claimants in the cases of *Donna Margaretta*⁵ and

³ V.O., 59 ECAB 500 (2008).

⁴ *Sari A. Shapiroholland*, 47 ECAB 682 (1996).

⁵ The claimant deviated from her mail delivery route when traveling to a convenience store located over two miles off of her route. The Board found that she was not in the performance of duty when injured as her preference for a more distant convenience store resulted in a personal mission rather than an act incidental to her employment and placed her where she would not reasonably be expected to be in connection with her employment.

Katrina D. Edwards,⁶ appellant took the most direct route between the place of origin and place of destination when she stopped at the McDonald's restaurant to use the restroom.⁷ This was not a personal mission as appellant was tending to a personal ministration, and no intent to abandon employment can be inferred as she remained on her delivery route and continued her deliveries following her use of the restroom facilities.⁸

Given that there are only verbal accounts of the employing establishment's policies and procedures for lunch and restroom breaks, and no formal handbook or guidelines, as well as no listing of which facilities are designated for such breaks,⁹ and the time frame to take them, and, given the fact that appellant had stopped at the McDonald's restroom for personal ministration as opposed to a personal mission while remaining on her designated route, I would find that appellant did not deviate from her employment and was in the performance of duty when she was allegedly injured in the restroom.

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⁶ The Board also found that claimant was not in the performance of duty when she traveled to a restaurant from the route designated by the employing establishment for her authorized lunch break. As in *Margaretta*, the Board again found that the more distant restaurant made the trip there a personal mission rather than an act incidental to her employment and placed her where she would not reasonably be expected to be in connection with her employment.

⁷ See *Colleen A. Murphy*, Docket No. 01-1319 (issued November 6, 2002).

⁸ *Supra* note 3.

⁹ *But see Ronnie E. Banks*, Docket No. 01-96 (issued July 19, 2001) (The employing establishment submitted a copy of a Form 1564-A, which noted the authorized lunch break locations for city letter carriers. The claimant, a city letter carrier, dined at a location which was not an approved lunch spot. He was injured when returning to his route after dining at a non-designated location. The Board found that appellant had deviated from his authorized route and, thus, had removed himself from the performance of duty at the time of the incident).