United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 20-0759**
	)	**Issued: September 22, 2021**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Tallahassee, FL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 20 2020 appellant, through counsel, filed a timely appeal from a December 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on December 7, 2016, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On December 7, 2016 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he was injured when his vehicle ran off the road and hit a tree at 9:00 p.m. that day. He noted that he was on official business when injured and suffered head, rib, and extremity injuries. The claim form indicated that appellant's regular work hours were 8:00 a.m. to 5:00 p.m.

The employing establishment controverted the claim, maintaining that appellant was not in the performance of duty as he was off the clock and had deviated from the direct line of travel to retrieve his vehicle from the repair shop on his way home. It also noted that no medical documentation had been submitted in support of the claim.

In a development letter dated January 24, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence needed to establish the claim and afforded him 30 days to submit the necessary evidence.

OWCP subsequently received an undated statement, wherein appellant explained that on the date of injury he went to work, and after delivering mail for approximately three miles, his personal vehicle that he used for mail delivery broke down. Appellant called his supervisor and a tow truck, which took him back to the employing establishment and towed his vehicle a shop to be repaired. He related that he used an employing establishment long life vehicle (LLV) to complete his route, and when he returned the LLV at 9:00 p.m., the night supervisor advised him that he had permission to pick up his personal work truck. Appellant indicated that he had to have his personal vehicle for work the next day, and that the postmaster, day, and night supervisors were aware that he had to deviate from his usual route home to pick up his work vehicle that had been repaired. He reported that his wife picked him up and took him to a shop where he picked up his personal vehicle. Appellant indicated that the motor vehicle accident (MVA) occurred as he was driving home, and that he was hospitalized for a week following the accident.

An emergency department report dated December 7, 2016, completed by Dr. Colby Scott Redfield, Board-certified in emergency medicine, and Dr. Shelby L. Blank, Board-certified in surgery, noted a history of an unrestrained MVA and that appellant had been admitted to the hospital. Final diagnoses were multiple bilateral rib fractures, liver contusion, mild mental status

[3] Docket No. 18-0445 (issued August 14, 2018).

changes consistent with traumatic brain injury, nasal/facial fractures, facial abrasions, and lower extremity lacerations.

In a January 5, 2017 statement, R.W., manager of customer service, reported that on December 7, 2016 appellant, a rural carrier, was involved in a single vehicle accident at approximately 9:00 p.m. He noted that appellant reported to work in his personal vehicle at 7:00 a.m., and that at approximately 11:00 a.m. appellant called to report that his personal vehicle had broken down, and he needed an LLV. R.W. related that a tow truck driver brought appellant back to the employing establishment, that appellant finished his route in an LLV, and signed out at 8:10 p.m. Appellant then retrieved his personal vehicle at some time during the period between 8:10 p.m. and 9:00 p.m. when he was involved in a single vehicle accident. R.W. indicated that it was the employing establishment's contention that appellant was not in the performance of duty for two reasons. First, because appellant had not used his personal vehicle to finish his route and, therefore, would not be covered for the drive home. Second, because he had deviated from a direct line of travel to retrieve his personal vehicle from the shop.

On February 1, 2017 Dr. L. Chris DeRosier, a Board-certified plastic surgeon, advised that appellant could not work.

By decision dated March 2, 2017, OWCP denied appellant's claim. It found that he was not in the performance of duty at the time of the December 7, 2016 MVA because he had deviated from his usual route home to conduct personal business.

On March 14, 2017 appellant, through counsel, timely requested a hearing with a representative of OWCP's Branch of Hearings and Review. Counsel submitted evidence previously of record. He also submitted a Step 1 grievance denial by the employing establishment that indicated that appellant was not on the clock when the MVA occurred and that appellant had deviated when the accident occurred at 9:00 p.m., noting that he had left the employing establishment at 8:10 p.m.[4]

OWCP received an unsigned, incomplete copy of a State of Florida traffic crash report. It documented that a single vehicle accident was reported at 8:58 p.m. on December 7, 2016, that it occurred on Centerville Road 35 feet south of the intersection with Centre Point Boulevard, that appellant was driving at the time of the MVA, that he had run off the roadway on the right, side of the roadway, and that he had injuries.

Additional medical evidence was also submitted including further reports from Dr. Blank and Dr. Rosier, and a June 9, 2017 report from Scott O. Burkhard, Psy.D., who opined that appellant had cognitive difficulties due to the December 7, 2016 MVA.

During the hearing, held on September 14, 2017, appellant described the events of December 7, 2017, indicating that his wife picked him up after work and took him to the vehicle

[4] Appellant's union provided a detailed statement of disputed facts. It maintained that, after appellant left the repair shop, he was following his normal line of travel when he lost control of his vehicle and hit a tree, suffering a head injury among other things. The union indicated that appellant was discharged from the hospital on December 12, 2016.

repair shop. He testified that he did not remember how the MVA happened, and perhaps he had the accident due to exhaustion because he was working 12- to 14-hour days. Counsel maintained that, because the employing establishment told appellant that he would need his vehicle the next day, appellant was in the performance of duty when picking it up, that he was reimbursed mileage for the use of his personal vehicle, and that he now had a traumatic brain injury and had not returned to work.

By decision dated November 28, 2017, OWCP's hearing representative affirmed the March 2, 2017 decision. She found that appellant was not in the performance of duty because, at the time of the December 7, 2016 MVA, he was conducting personal business and had deviated from his direct route home.

On December 29, 2017 appellant, through counsel, filed an appeal with the Board.

By decision dated August 14, 2018,[5] the Board found the case not in posture for decision because the case record, as transmitted to the Board, was insufficient and would not permit an informed adjudication of the case. The Board found that there was insufficient evidence regarding the employing establishment's policy regarding use of a personal vehicle by a rural carrier, particularly as to whether appellant was required to use this personal vehicle each day and whether he would have needed his vehicle to perform his employment duties on December 8, 2016. The Board set aside the November 28, 2017 decision and remanded the case for further development including, but not limited to, securing evidence from the employing establishment evidence regarding its policies on personal vehicle use by rural carriers or any agreements between appellant and the employing establishment regarding the use of his own vehicle.

By letter dated September 18, 2018, OWCP requested that the employing establishment provide information regarding whether appellant would have needed his vehicle to perform employment duties on December 8, 2016, to furnish a statement from appellant's supervisor describing the manner in which the work required him to travel with his own vehicle as a rural carrier, and when and in what manner appellant was told that he had to work using his personal vehicle on December 8, 2016.[6]

In correspondence dated October 3, 2018, counsel related that the employing establishment rules indicated that appellant must have a personal vehicle to bid on a rural route, and that he used a government LLV one day because his personal vehicle needed immediate repairs. Appellant immediately took his personal vehicle in for those repairs, and when he returned the LLV, he was told that it would not be available for him the next day and that he would need to retrieve his personal vehicle to do his route. Counsel also noted that appellant received a stipend for using his personal vehicle. Additional medical evidence was also submitted.

On October 5, 2018 T.D., a postmaster, indicated that an executive level supervisor was not present at the time of the December 2016 incident, but as appellant was a rural carrier, he

[5] *Supra* note 3.

[6] The Board notes that it appears that the date referenced was a typographical error as the MVA occurred on December 7, 2016.

would have been paid mileage for the use of his personal vehicle. T.D. noted that appellant was off the clock when the MVA occurred and maintained that he had deviated from his normal route home.

By letter dated October 24, 2018, counsel argued that appellant confirmed that he was informed *via* telephone by K.C., his supervisor, to get his truck repaired immediately because no government vehicle would be available the following day.

In correspondence dated November 14, 2018, T.D. indicated that appellant would have needed his vehicle to perform employment duties on December 8, 2016, noting that he was required to deliver mail to an assigned route using his own vehicle. He provided a list of basic carrier responsibilities that included that a carrier provide and maintain a vehicle. T.D. indicated that appellant became a postal rural carrier associate on April 2, 2005, at which time he would have been told by the hiring coordinator that he must furnish his own vehicle in order to service his assigned route, and would have been provided a copy of the rural carrier handbook. He continued that, as for using his personal vehicle on December 8, 2016, appellant was fully aware that furnishing his own vehicle was a requirement. T.D. concluded that rural carriers were protected under FECA for an injury sustained in the performance of duty and are considered to be in the performance of duty for purposes of FECA when driving their own vehicle between their home and the employing establishment, and between the employing establishment and their home, and are required to wear a seatbelt when traveling from home to the place of employment and from the place of employment to home.[7]

By decision dated November 19, 2018, OWCP again denied appellant's claim, finding that appellant was not in the performance of duty when injured on December 7, 2016.

On November 26, 2018 appellant, through counsel, requested a hearing before OWCP's Branch of Hearings and Review. In correspondence dated December 21, 2018, counsel maintained that K.C. needed to provide a statement to clarify whether she told appellant that he had to get his truck repaired immediately because no government vehicle would be available for him the next day. Counsel also provided a copy of a letter he sent K.C. regarding this matter, and e-mail correspondence from appellant regarding his attempts to get in contact with K.C.

During a March 13, 2019 hearing, counsel asserted that, because no employing establishment LLV would be available, K.C. directed appellant to get his personal vehicle from the repair shop on the evening of the MVA, and asked that the hearing representative remand the case to obtain a statement from K.C. Appellant testified that, because an LLV would not be available and because a substitute carrier was also unavailable, he had to pick up his vehicle so that he could have it the next day. He stated that his wife picked him up and took him to the repair shop, and that he had the MVA on his way home from there when he hit an oak tree just off the road.

[7] The Board notes that T.D. identified the date of claimed injury as December 8, 2016 when the record indicates that it occurred on December 7, 2016.

By decision dated May 23, 2019, the hearing representative remanded the case for OWCP to obtain a statement from Supervisor K.C.

On May 28, 2019 OWCP directed the employing establishment to obtain a statement from K.C. addressing whether on December 7, 2016 she told appellant that no LLV would be available for him on December 8, 2016, and whether she advised him that he needed to retrieve his personal vehicle from the repair shop that day in order to work on December 8, 2016. It also directed the employing establishment to obtain a statement from the night supervisor, identified as M.B., and postmaster at that time, E.G., regarding any information or knowledge they had regarding whether appellant had been instructed or had permission to pick up his repaired vehicle on his way home on December 7, 2016 in order to work on December 8, 2016.

In a statement signed by K.C. on June 6, 2019, she indicated that she had been the opening supervisor at appellant's duty station on December 7, 2016. She related that his privately-owned vehicle had a breakdown that day, and an LLV was available for him to complete his route. K.C. related that the only thing she remembered telling appellant was that he would need to have a suitable vehicle to complete his delivery duty requirements on December 8, 2016.

In a June 5, 2019 statement, M.B. indicated that she was the closing supervisor on December 7, 2016. She related that appellant had been given an LLV to deliver his route that day because his vehicle had broken down, and that when he returned from delivery, he told her that his wife was on her way to pick him up. M.B. indicated that appellant did not mention that he was going to get his vehicle at the repair shop, and that as far as she knew, he had not been instructed to pick it up.

In a June 6, 2019 statement, E.M. related that he had no knowledge that appellant had been given instructions or permission to pick up his vehicle.

By decision dated June 10, 2019, OWCP again denied the claim, finding that appellant was not in the performance of duty when the MVA occurred on December 7, 2019.

On June 18, 2019 appellant, through counsel, requested a hearing before an OWCP hearing representative.

During an October 15, 2019 hearing, counsel reiterated that appellant was in the performance of duty when injured on December 7, 2016 because he had been told that he had to pick up his postal vehicle so that he could deliver mail on December 8, 2017. The hearing representative questioned appellant about his current medical condition and asked that he submit updated medical evidence. The record was held open for 30 days.

Appellant thereafter submitted medical evidence previously of record.

By decision dated December 23, 2019, the hearing representative affirmed OWCP's June 10, 2019 decision. She found that the evidence of record was insufficient to establish that appellant was in the performance of duty when injured on December 7, 2018, noting that it occurred approximately one hour after he clocked out for the day and that he was not on a direct route home. The hearing representative further found that the evidence of record was insufficient to support that appellant was sent on a special errand to retrieve his repaired personal vehicle.

Rather, the evidence supported that K.C. reminded appellant of his obligations to have transportation available for his duties the following day.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, 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 "the disability or death of an employee resulting from personal injury sustained while in the performance of his duty."[8] The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated: "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."[9] In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[10]

It is a well-established principle that where the employee as part of his or her job is required to bring along his or her own car, truck or motorcycle for use during the working day, the trip to and from work is by that fact alone embraced within the course of employment.[11] Because rural carriers may use their own transportation to deliver their routes, which is a benefit to the employer, they may be deemed to be in the performance of their duties when they are driving their vehicles to and from their route, when they are required by the employing establishment to provide their own transportation.[12]

The Board has also recognized the special errand exception to the going to and coming from work rule. When the employee is to perform a special errand, the employer is deemed to have agreed, expressly or impliedly, that the employment service should begin when the employee leaves home or work to perform the errand. Ordinarily, cases falling within this exception involve travel, which differs in time or route or because of an intermediate stop, from the trip, which is normally taken between home and work. In such a case, the hazard encountered in the trip may differ somewhat from that involved in normally going to and returning from work. However, the

[8] 5 U.S.C. § 8102(a); *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *Angel R. Garcia*, 52 ECAB 137 (2000).

[9] *K.G.*, Docket No. 18-1725 (issued May 15, 2019); *George E. Franks*, 52 ECAB 474 (2001).

[10] *A.G.*, Docket No. 18-1560 (issued July 22, 2020); *Mark Love*, 52 ECAB 490 (2001).

[11] *J.C.*, Docket No. 17-0995 (issued November 3, 2017); Lex K. Larson, *The Law of Workers' Compensation*, § 15.05 (2013).

[12] *J.C.*, *id.*; *L.T.*, Docket No. 09-1798 (issued August 5, 2010).

essence of the exception is not found in the fact that a greater or different hazard is encountered, but in the agreement to undertake a special task. For this reason, coverage is afforded from the time the employee leaves home, even though in time and route the journey may be, in part, identical to that normally followed in going to work.[13]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the December 7, 2016 incident occurred in the performance of duty as alleged.

On December 7, 2016, appellant's personal vehicle broke down as he was delivering mail, and it was towed to a repair shop. Appellant was given an employing establishment LLV to finish delivery that day. He has consistently alleged that at the end of his workday on December 7, 2016, he was told by his supervisor K.C. that an LLV would not be available for his use the following day, therefore, in order to deliver mail on December 8, 2016, he had to retrieve his personal vehicle from the repair shop. Appellant's wife then picked him up from the employing establishment and took him to the repair shop where he picked up his repaired vehicle, and on the way home, the vehicle left the road and hit a tree. Appellant thereafter claimed that, because he was ordered to pick up the vehicle to deliver mail the following day, he was on a special errand and, therefore, the MVA that occurred on December 7, 2016 was in the performance of duty.

The record indicates that the employing establishment policies require that rural carriers have a personal vehicle in order to deliver mail. K.C., his supervisor, provided a statement in which she confirmed that she told appellant that he would have to have a suitable vehicle to deliver mail on December 8, 2016. Because rural carriers use their own transportation to deliver their routes, which is a benefit to the employer, they may be deemed to be in the performance of their duties when they are driving their vehicles to and from home and work; and, as in this case, if they are expressly or impliedly authorized to perform a special errand.[14] As appellant had been told by K.C., his supervisor, that the employing establishment would not have an LLV available for his use on December 8, 2016 and he would need his own vehicle to complete his route that day, the Board finds that appellant was injured while on a special errand, which was necessitated by the service for which he was employed.[15]

As the Board finds that the appellant was in the performance of duty, the case must be remanded for consideration of the medical evidence of record. After any this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish a medical condition causally related to the accepted employment incident.

[13] *K.M.*, Docket No. 17-1263 (issued December 19, 2018); *D.T.*, Docket No. 11-0751 (issued March 12, 2012).

[14] *Id*.

[15] *K.G.*, Docket No. 18-1725 (issued May 15, 2019).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the December 7, 2016 incident occurred in the performance of duty as alleged. The Board further finds that the case is not in posture for decision as to whether appellant sustained an injury causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2019 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 22, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board