U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN A. MEGATULSKI and DEPARTMENT OF VETERANS AFFAIRS, BOARD OF VETERANS APPEALS, Wilkes-Barre, Pa.

Docket No. 97-981; Submitted on the Record;
Issued December 22, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury and resultant disability while in the performance of duty on January 18, 1996.

On January 26, 1996 appellant, then a 45-year-old office automation assistant, filed a notice of traumatic injury and claim, alleging that on January 18, 1996 she sustained an injury to her lower back, upper and lower leg and buttocks when she slipped on water and ice in the parking lot of Genetti's which was across the street from the Jewelcor Building where her office was situated. In a decision dated October 10, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that the incident occurred in the performance of duty. By merit decision dated January 14, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that she sustained an injury on January 18, 1996 while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

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

[1] *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence if an employee/employer relation.[2] 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 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 the time of injury whereas "arising out of employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.[3] In addressing the issue, the Board stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in something incidental thereto."[4]

With respect to the phrase "in the course of employment" the Board has accepted the general rule of workers' compensation law that the injuries of employees having fixed hours and places of work that occur on the premises of the employing establishment while the employee is going to or coming from work, before or after work or at lunch time, are compensable.[5] Given this rule, the Board has also noted that the course of employment for an employee having a fixed time and place of work includes a reasonable time before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts, and that what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee activity incident to her employment.[6] Some substantial employer benefit or an employer requirement must be shown therefore in order to consider the activity involved to be arising out of employment. It is incumbent upon appellant to establish that it arose out of her employment; that is, the accident must be shown to have resulted from some risk incidental to the employment.[7]

In the present case, appellant slipped on ice and water, during emergency weather conditions, in a parking lot off premises while she was commuting to work. The Board has recognized, as a general rule, that off-premises injuries sustained by employees having fixed

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[2] *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Heubner*, 2 ECAB 20 (1948).

[3] *Denis F. Rafferty*, 16 ECAB 413 (1965).

[4] *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

[5] *See Annette Stonework*, 35 ECAB 306 (1983).

[6] *Narbik A. Karamian*, 40 ECAB 617 (1989) (citing *Clayton Verner*, 37 ECAB 248 (1985)).

[7] *Timothy K. Burns*, 44 ECAB 125 (1992).

hours and places of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment. Such injuries are merely the ordinary, nonemployment hazards of the journey itself which are shared by ordinary travelers. There are recognized exceptions which are dependent upon the particular facts relative to each claim. These exceptions pertain to the following instances: (1) where the employment requires the employee to travel on highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of a fireman; and (4) where the employee uses the highway to do something incidental to her employment with the knowledge and approval of the employer.[8]

Appellant's commute to her place of employment does not fall within any of the recognized exceptions to the general rule as she was not required to travel as a requisite of her employment; she was not using transportation supplied by the employing establishment to commute to and from work; she was not subject to emergency calls; and she was not engaged in an activity incidental to her employment at the time of the alleged incident. While appellant indicated on her notice of traumatic injury that there were "emergency weather conditions" at the time of her injury which would suggest that she was subject to "emergency calls" and might fall within the exception to the general rule, there is no indication in the record that the government was shut down on the day in the question due to said "emergency weather conditions" or that appellant was responding as essential emergency personnel to her place of employment. Appellant has not established that she sustained any injuries in the performance of duty causally related to factors of her federal employment.

[8] *Robert A. Hoban*, 6 ECAB 773 (1954) citing *Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469 (1947); *see also Melvin Silver*, 45 ECAB 677 (1994).

The decisions of the Office of Workers' Compensation Programs dated January 14, 1997 and October 10, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 22, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member