U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN CLARK <u>and</u> U.S. POSTAL SERVICE,
POST OFFICE, Billings, Mont.

Docket No. 96-1274; Submitted on the Record;
Issued February 23, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury in the performance of duty, as alleged.

In an undated claim for a traumatic injury, Form CA-1, which was received by the Office of Workers' Compensation Programs on February 2, 1995, appellant, then a 46-year-old distribution/window clerk, alleged that on November 9, 1994 she sustained an injury in a car accident occurring at 2:25 p.m. during her employment. Appellant's supervisor stated that the car accident occurred while appellant was on her lunch hour during a scheduled day at work. Appellant has not worked since the car accident.

By letter dated December 5, 1995, the employing establishment's officer-in-charge stated that appellant reported for work at 7:50 a.m. on November 9, 1994. When she was preparing to leave for her lunch break, she took money from the stamp vending machine to obtain change at the bank on her way to Missoula to eat lunch and so informed the officer-in-charge. She left the employing establishment at 1415 or 2:15 p.m., drove north approximately a quarter of a mile to the bank and proceeded north towards Missoula in her personal vehicle. Appellant did not bring the change back to the employing establishment before proceeding to lunch. As she was proceeding north, she was hit head on by a car at 2:25 p.m.

By letter dated February 14, 1994, the Office requested that appellant submit additional information including a detailed description of the injury and a medical report.

By letter dated February 23, 1995, the employing establishment controverted the claim, stating the car accident did not occur in the performance of duty. The employing establishment noted that prior to going to lunch, appellant had informed her supervisor that she was going to deposit monies from the employing establishment and obtain change from the bank on her way to lunch. She signed her time card at 1415 or 2:15 p.m., indicating that her lunch hour began at that time. Appellant was one and one-half miles from the employing establishment when the

accident occurred. Appellant was not scheduled to report back to work until 1445 or 2:45 p.m. The employing establishment attached a copy of appellant's time card showing that on November 9, 1994 she "clocked out" at 1415.

By decision dated March 20, 1995, the Office denied the claim stating that the evidence of record failed to establish that the injury occurred in the performance of duty.

On June 15, 1995 appellant, through her attorney, requested reconsideration of the Office's decision. The attorney stated that although appellant was driving away from her workplace at the time of the November 9, 1995 employment injury, she routinely drove in that direction in order to safely cross the four lanes of traffic by driving to a nearby turnabout. The attorney stated that appellant's time card on November 9, 1995 indicated that she was "on the clock" at the time of the accident.

By decision dated July 28, 1995, the Office denied appellant's reconsideration request.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty, as alleged.

The Federal Employees' Compensation Act 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."[1] 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."[2]

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[3] There are four exceptions to this general rule: "(1) where the employment requires the employee to travel on the 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 firemen; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer."[4] In his discussion on deviation from a

[1] 5 U.S.C. § 8102(a).

[2] *Cora L. Falcon*, 43 ECAB 915, 916 (1992); *Mary Keszler*, 38 ECAB 735, 739 (1987).

[3] *Samuel Curiale*, 48 ECAB ____ (Docket No. 95-507, issued April 25, 1997); *Mary Keszler*, *supra* note 2 at 739-40.

[4] *Samuel Curiale*, *supra* note 3 at n.7; *Betty R. Rutherford*, 40 ECAB 496 (1989).

prescribed work-related route, Larson notes that the majority view is that a side trip for personal reasons remains a deviation until completed, that is until the main work-related route is regained.[5]

In the instant case, none of the exceptions to the off-premises rule applies. As shown by appellant's time card, on November 9, 1994 appellant clocked out at 1415 or 2:15 p.m. for lunch. Appellant informed her supervisor that she was going to take the monies to the bank, deposit them and obtain change on her way to lunch in Missoula. Based on the employing establishment's and officer's-in-charge statements, appellant had finished her errand at the bank which was a quarter of a mile north of the employing establishment and was one and a half miles from the employing establishment going north toward Missoula when the accident occurred. Since appellant had finished her errand at the bank and was heading toward Missoula for lunch when the accident occurred, appellant was no longer reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. Further, appellant's route to go to lunch in Missoula constitutes a side trip and there is no evidence to show, as appellant's attorney asserts, that appellant was on her way back to work at the time of the accident. Appellant has therefore not demonstrated that her alleged work-related injury occurred in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated July 28 and March 20, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 23, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[5] *See* 1 A. Larson, *The Law of Workmen's Compensation* § 19.33 (1990); *Katherine A. Kirtos*, 42 ECAB 160, 167 (1990).