U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE DOE (OWCP File No. A2-625648) and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Buffalo, N.Y.

Docket No. 96-2477; Submitted on the Record;
Issued August 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant was an "employee" of the United States within the meaning of the Federal Employees' Compensation Act at the time of her November 28, 1990 injury.

In the present case, on November 29, 1990 a claim for compensation benefits was filed on behalf of appellant by the employing establishment. This claim arose from a needle stick injury to appellant's right index finger which occurred on November 28, 1990 while appellant was drawing blood from a patient, while completing a phlebotomy laboratory rotation at the employing establishment's facility. The Office of Workers' Compensation Programs accepted, by decision dated May 16, 1996, that appellant was an employee of the Veterans Administration Medical Center at the time of the injury; that this claim was timely filed; that appellant sustained a needle stick injury while performing assigned tasks at the Veterans Administration Medical Center; and that the needle stick resulted from the performance of the assigned tasks.[1] On appeal appellant asserts that she was not an employee of the Veterans Administration Medical Center at the time of the injury and that she is therefore not eligible for benefits pursuant to the Act.

The Board has duly reviewed the case record and finds that appellant was an employee of the United States at the time of her November 28, 1990 injury.

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[1] Pursuant to the Act, 5 U.S.C. § 8101 *et. seq.*, the essential elements which must be established to determine eligibility for receipt of benefits are that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury; *see Corlisia L. Sims (Smith)*, 46 ECAB 172 (1994).

The Act at 5 U.S.C. § 8102 provides that the United States shall pay compensation for the disability or death of an "employee" resulting from personal injury sustained while in the performance of his duty. The term "employee" is further defined by section 8101(1) of the Act as:

> "(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;
>
> (B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual.…"

The evidence of record establishes that during the fall term of 1990, appellant was a student in the phlebotomy training program at Erie Community College. As part of the Erie Community College's phlebotomy program she was required by the school to perform a two-day, twelve-hour, hospital rotation at the Veterans Medical Center. In 1988, Erie Community College and the Veterans Medical Center had entered into a Memorandum of Affiliation wherein both parties agreed to the assignment of Erie Community College students to the Medical Center for clinical experience. The Board finds that, while appellant was performing her rotation on November 28, 1990 as an unpaid student from Erie Community College assigned to assist in the Medical Center's phlebotomy laboratory performing such duties as drawing blood samples, appellant was rendering personal service to the United States which was similar to the services of paid employees such as medical technicians within the laboratory.

The Board also finds that there was a Veterans Administration statute in effect at the time of the injury which authorized the acceptance or use of the service provided by appellant.[2] The statute, 38 U.S.C. § 213 provided for the acceptance of personal services by the Veterans Administration (now the Department of Veterans Affairs).[3] This statute provided as follows:

> "The Administrator may, for purposes of all laws administered by the Veterans Administration, accept uncompensated services, and enter into contracts or agreements with private or public agencies or persons (including contracts for services of translators without regard to any other law), for such necessary services (including personal services) as the Administrator may deem practicable.…"

The memorandum of affiliation entered into by Erie Community College and the Veterans Medical Center was an agreement by which the Community College would assign students to the Veterans Medical Center for performance of uncompensated services. By this

[2] *See Nora M. Lewis*, 37 ECAB 245 (1985).

[3] 38 U.S.C. § 213 was repealed by Pub. L. 102-40, title IV, section 401(b)(2) May 7, 1991. Pub. L. 102-40 also created 38 U.S.C. § 513 which contains provisions substantially similar to those previously contained in section 213.

memorandum of affiliation the employing establishment accepted the uncompensated services of Erie Community College students. The Department of Veterans Affairs was further authorized by statute to specifically accept such services as appellant performed on November 28, 1990. This statute, 38 U.S.C. § 4114, which was in effect at the time of appellant's injury,[4] provided as follows:

> "(a)(1) The Administrator, upon the recommendation of the Chief Medical Director, may employ, without regard to civil service or classification law, rules, or regulations-
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> (A) physicians, dentists, podiatrists, optometrists, nurses, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, dietitians, social workers, librarians, and other profession, clerical, technical and unskilled personnel (including interns, residents, trainees, and students in medical support programs) on a temporary full-time, part-time, or without compensation basis; …."

The evidence of record therefore does establish that, while appellant was performing services at the employing establishment phlebotomy laboratory, appellant was performing personal service which was similar to that performed by employees of the United States, and the evidence of record also establishes that the employing establishment was authorized by statute to accept such uncompensated service by appellant, a student in a medical support program.

Appellant alleges that she was not an "employee" of the United States at the time of the injury as she did not sign a letter of appointment activating her status as a "Medical Technology Student-EEC Phlebotomy" to the Veterans Administration Medical Center until approximately three hours after her injury. The evidence of record establishes that appellant's injury occurred at approximately 11:25 a.m. on November 28, 1990, on the first day of her Medical Center rotation. At approximately 2:30 p.m. on November 28, 1990 appellant was called to the employing establishment's personnel office and was given a letter welcoming her to the employing establishment and assigning her to perform services as directed by the Chief of Laboratory Services. The Board finds that this letter is irrelevant to appellant's status as an "employee" of the United States. The statute which defines an "employee" of the United States does not require that any written form of agreement be entered into by the employer and the individual providing services prior to acceptance of personal services by the employer. There is no dispute that as part of her medical training program appellant was performing personal service to the United States at the time of her injury, and the employing establishment was authorized to accept such service; appellant therefore was an "employee" of the United States at the time of her injury on November 28, 1990.

[4] 38 U.S.C. § 4114 was repealed by Pub. L. 102-40, title IV, section 401(b)(2) May 7, 1991. Pub. L. 102-40 also added 38 U.S.C. § 7405 which contains provisions substantially similar to those previously contained in section 4114.

The decision of the Office of Workers' Compensation Programs dated May 16, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 24, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member