U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY G. PETERS and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT AGENCY, Dallas, TX

Docket No. 98-1735; Submitted on the Record;
Issued December 14, 1999

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty.

On August 13, 1996 appellant, then a 50-year-old fingerprint examiner, filed a claim for traumatic injury alleging that while on a temporary duty (TDY) assignment on August 8, 1996 he sustained a right knee injury while working out in the gym after class. Appellant was attending a basic chemist school training course with the employing establishment in Leesburg, Virginia at Xerox University. Both he and his witness, Jennifer Lee, a fellow classmate, claimed that they were working out in the weight room after class when appellant injured his knee. The supervisor in charge of training, James Fabares, noted that the incident occurred after duty hours in the gymnasium at the temporary duty facility.

Appellant submitted medical evidence which supported that he had right knee pain and on January 21, 1997 a torn medial meniscus was diagnosed.

By decision dated April 8, 1997, the Office of Workers' Compensation Programs denied appellant's claim finding that the medical evidence failed to establish a causal relationship between the accident and his condition.

By letter dated April 29, 1997, appellant requested an oral hearing. A hearing was held on January 23, 1998 at which appellant testified. Following the hearing, appellant submitted further medical evidence.

By decision dated March 6, 1998, the hearing representative affirmed the April 8, 1997 decision, finding that the medical evidence submitted was insufficient to establish causal relationship between the incident and appellant's present condition.

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

The general rule regarding coverage of employees on travel status or on temporary duty assignments is set forth by *Larson*, in his treatise *The Law of Workers' Compensation*:[1]

> "Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, *except when a distinct departure on a personal errand is shown.* Thus injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."[2]

The Board has similarly recognized that the Federal Employees' Compensation Act covers an employee 24 hours a day when the employee is on travel status and engaged in activities essential or incidental to such duties.[3] When the employee, however, deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during these deviations is not compensable.[4]

The general criteria for performance of duty as it relates to recreational or social activities, is set forth in *Larson* as follows:

> "Recreational or social activities are within the course of employment when: (1) They occur on the premises during a lunch or recreational period *as a regular incident of employment*; or (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreational and social life."[5] (Emphasis added.)

The factual mix of this case does not satisfy the criteria set forth above. In this case, the personal recreational activity, weight training, took place in the gym of the university where the training classes were being held; however, it is not an activity reasonably related to the temporary duty assignment;[6] the employer did not expressly or impliedly require participation in

[1] 1A A. Larson, *The Law of Workers' Compensation* § 25.00 (1994).

[2] *Id.*

[3] *See Ann P. Drennan*, 47 ECAB 750 (1996); *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein.

[4] *Id.*

[5] *See supra* note 1, § 22.00 (1993).

[6] *See Lawrence J. Kolodzi*, 44 ECAB 818 (1993); *cf. Stephen H. Greenleigh*, 23 ECAB 53 (1971).

weight training nor was the activity part of the services of the employee;[7] and the employer derived no substantial direct benefit from the activity.[8]

In this case, appellant was merely afforded the opportunity to work out at the university gymnasium after duty hours. The only benefit derived from this activity was by appellant for his improved health and morale. Therefore, the level of employer sanction is not sufficient to bring appellant's voluntary, personal activity of weight training within the course of employment under the criteria established for recreational and social activities.[9]

Consequently, the Board finds no basis on which to bring appellant's weight training activity at the time of injury within the coverage of the Act, either as reasonably incidental to his travel assignment, or as a covered recreational activity. Appellant is, therefore, found not to be in the performance of duty at the time of the claimed injuries on August 8, 1996.

[7] *See Lawrence J. Kolodzi, supra* note 6; *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[8] *See Lawrence J. Kolodzi, supra* note 6; *see also Lindsay A.C. Moulton*, 39 ECAB 434 (1988).

[9] Other examples of noncompensable, personal deviations from the normal incidents of employment while on travel or temporary duty are found in prior Board decisions: In *Karl Kuykendall*, 31 ECAB 163 (1979), the employee was on TDY for training in Denver and sustained an injury skiing. The Board found that he had deviated from activities reasonably incidental to his TDY assignment. In *Lawrence J. Kolodzi, supra* note 6, the employee was injured at a health club playing racquetball after his workday had ended. The Board found that he had deviated from his TDY assignment for personal and recreational purposes. In *Evelyn S. Ibarra*, 45 ECAB 840 (1994), the employee was injured while jogging during her lunch hour and Board found that this was a personal recreational activity not reasonably related to her TDY assignment. In *Ann P. Drennen*, 47 ECAB 750 (1996), the employee was TDY to Portland. Maine to participate in the selection of an immigration inspector and was injured when she went for a walk on the beach, which she did as a daily health activity. The Board found that walking on the beach was a personal recreational activity not reasonably incidental to her TDY duties.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 6, 1998 is modified to reflect that appellant's incident did not occur in the performance of duty and is affirmed as modified.

Dated, Washington, D.C.
December 14, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member