U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN A. McCRARY and FEDERAL JUDICIARY,
U.S. DISTRICT COURT PROBATION OFFICE, Los Angeles, Calif.

Docket No. 97-1402; Submitted on the Record;
Issued July 1, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained carpal tunnel syndrome while in the performance of duty.

On July 26, 1996 appellant, then a 37-year-old probation officer, filed an occupational disease claim, alleging that she sustained carpal tunnel syndrome which she first became aware of on July 12, 1996. She indicated that she had "voluntarily assumed certain tasks, including typing and computer data entries, usually completed by clerical personnel" since December 1992. In supplemental statements, appellant indicated that she spent approximately three hours daily performing the aforementioned clerical duties from November 1994 to October 1995 and also performed duties including preparation of schedules for installation and disconnection of equipment, and typing of duty rosters, various reports and letters.

The employing establishment controverted appellant's claim, noting that appellant performed the alleged causative factors voluntarily. It noted that appellant may have felt she would expedite work if she performed these duties and that although she may have perceived a clerical shortage, the agency did not have one and assigned personnel continuously offered to do the work in question.

In a decision dated January 22, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the claimed condition did not occur within the performance of duty.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

An employee who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that occurrence of an injury at the time, place and in the manner

[1] 5 U.S.C. §§ 8101-8193.

alleged, by preponderance of the reliable, probative and substantial evidence.[2] Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence if an employee/employer relation.[3] 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.[4] 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."[5]

In order for an injury to be considered as "arising out of the employment," the facts of the case must show some "substantial employer benefit or an employer requirement" which gave rise to the injury.[6]

In the present case, appellant has indicated that she spent approximately three hours each day performing computer work and other clerical duties. The employing establishment has not controverted this aspect of appellant's statement. Rather, the employing establishment has indicated that while appellant did perform these duties, she was not required to do so and performed the tasks voluntarily. Inasmuch as the work that appellant performed was for the benefit of the employing establishment and was performed at appellant's place of employment, she has satisfied the first two parts of the tests for whether the injuries occurred within the "course of employment."

Turning to the third part of the test, whether appellant was "reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto," there is a concomitant requirement of an injury "arising out of the employment." While the employing establishment has clearly established that it did not require appellant to perform the tasks she

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[2] *William Sircovitch*, 38 ECAB 756 (1987).

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

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

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

[6] *Eugene G. Chin*, 39 ECAB 598 (1988); *Nona J. Noel*, 36 ECAB 329 (1984).

described in her supplemental statement, the identified tasks may nonetheless be deemed to have arisen out of employment if it is established that the employing establishment derived a substantial benefit from her actions. The Board notes that appellant and the employing establishment have indicated that appellant may have perceived a shortage of clerical personnel which is why she may have engaged in her voluntary duties. In this case, appellant's work may be deemed to be reasonably incidental to her employment as she was engaged in work that was not expressly prohibited, was acting in good faith outside her employment duties in the furtherance of her employer's business and her aim was not in reaching some specific personal objective.[7] Thus, appellant has established that she was exposed to the identified factors while in the performance of duty. Consequently, the case will be remanded for further development with regard to whether appellant has established entitlement to compensation benefits.

The decision of the Office of Workers' Compensation Programs dated January 22, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
July 1, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] *See Thomas E. Keplinger*, 46 ECAB 699 (1995); *cf. Timothy K. Burns*, 44 ECAB 125 (1992); *Dannie G. Frezzell*, 40 ECAB 1291 (1989).