United States Department of Labor
Employees' Compensation Appeals Board

MARGARET F. TEFFT, Appellant	)	
and	)	**Docket No. 04-745**
	)	**Issued: October 6, 2004**
DEPARTMENT OF THE AIR FORCE, AIR NATIONAL GUARD, Providence, RI, Employer	)	

Appearances:
Margaret F. Tefft, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 26, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 15, 2003 which denied her claim on the basis that fact of injury had not been established. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 18, 2000.

FACTUAL HISTORY

On July 17, 2003 appellant, then a 52-year-old office automation clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a broken tooth, upper left side, while eating a sandwich that had a lobster shell in it on August 18, 2000. She sought treatment on August 22, 2000 with Dr. Rebecca Woodward, a dentist. In a July 17, 2003 statement, Mike Anthon advised that appellant was eating a DeAngelo lobster sandwich with some of their coworkers when she

apparently bit into a piece of lobster shell and broke one of her teeth. Appellant's supervisor advised that appellant was eating at her desk at the time of the incident. There is no indication that appellant stopped work as a result of the August 18, 2000 incident.

In a July 22, 2003 letter, the Office advised appellant that the information submitted in her claim was not sufficient to determine whether she was eligible for benefits under the Federal Employees' Compensation Act.[1] The Office requested additional factual and medical information. Appellant was directed to provide a comprehensive medical report and a physician's opinion, with medical reasons, as to how appellant's work caused or aggravated the claimed injury. Appellant was provided 30 days to submit the requested information. The Office did not receive any additional information from appellant.

By decision dated August 25, 2003, the Office denied appellant's claim. The Office found that, while appellant experienced the claimed employment factor, she failed to provide medical evidence to establish a relationship between the work incident and her medical condition.

On September 3, 2003 appellant requested a review of the written record. In an undated statement, which the Office received on October 27, 2003, appellant stated that her entire section had ordered sandwiches from a DeAngelo's sandwich shop and that everyone came into the orderly room where her desk was located to eat lunch. She reiterated that she bit into a shell while eating a lobster sandwich and broke the front off of her top left tooth. She stated that she immediately called a dentist because the tooth was sensitive, and saw Dr. Woodward on August 22, 2000. Appellant stated that she received a filling. She stated that the tooth required a cap as it was still sensitive, but she did not have the funds to have the tooth capped. She related that the injury was not reported as she did not know that her situation was compensable. No medical evidence was submitted.

By decision dated December 15, 2003, an Office hearing representative reviewed the written record and affirmed the August 25, 2003 decision.

LEGAL PRECEDENT

The Act[2] provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment." "In the course of employment" relates to the elements of time, place and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's business, at a place where she may reasonably be expected to be in connection with the employment and while she was

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[4] The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[5]

It is well settled that an employee who within the time and space limits of employment engages in an act that ministers to personal comfort, health or necessity does not leave the course of employment and an injury sustained on her way to, from or during a period of ministering to such needs is compensable as arising out of and in the course of employment, unless there is a departure so great that an intent to abandon the job temporarily may be inferred or unless the conduct cannot be considered an incident of the employment.[6] Acts of personal comfort, such as eating a snack, using the bathroom or drinking water or other beverages, are generally considered to be in the performance of duty.[7]

ANALYSIS

In the present case, appellant had ordered a lobster sandwich from a sandwich shop and broke her tooth while eating the sandwich at her desk. The time, place and manner in which the August 18, 2000 incident occurred is not disputed.[8] A review of the record does not indicate that it was unusual or unreasonable for appellant to eat at her desk. Accordingly, appellant's eating a sandwich at her desk is an act of personal comfort which is covered under the personal comfort doctrine.[9] Thus, appellant's injury sustained while eating a sandwich at her desk arose in the performance of duty.

The Board notes that the Office denied appellant's claim on the basis that there was no medical evidence of record to establish that she sustained an injury to her tooth on August 18, 2000 due to the employment incident. Although causal relationship generally requires a rationalized medical opinion, the Office may accept a case without a medical report when one or more of the following criteria, as set forth in the Office's procedure manual, are satisfied:

> "(a) The condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect sting or animal bite);

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

[5] *John B. Shutack*, 54 ECAB ____ (Docket No. 02-2143, issued January 8, 2003); *see also Bettina M. Graf*, 47 ECAB 687 (1996).

[6] *Sari A. Shapiroholland*, 47 ECAB 682 (1996); s*ee also Nancy E. Barron*, 36 ECAB 428 (1985).

[7] *James E. Chadden, Sr.*, 40 ECAB 312 (1988); *Mary M. Martin*, 34 ECAB 525 (1983).

[8] Under the Act, as amended in 1974, a claimant has three years to file a claim for compensation. 5 U.S.C. § 8122. As appellant filed her claim for the August 18, 2000 incident on July 17, 2003, appellant's claim was timely filed.

[9] *Mary Kokich*, 52 ECAB 239 (2001) (where an injury sustained while opening a can of fruit during a snack break arose in the performance of duty).

"(b) The injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and

"(c) No time was lost from work due to disability."[10]

In the present case, the condition reported, a broken tooth, meets the first criterion as the condition can be identified on visual inspection by a lay person as described by appellant and Mr. Anthon, who witnessed the incident. Appellant immediately sought treatment from a dentist and had her tooth treated. There was no indication that the broken tooth was considered a serious condition as appellant did not stop work after visiting her dentist. The first and second criterion are therefore satisfied.

In her factual statement, which the Office received on October 27, 2003, appellant noted that she did not report her injury immediately because she did not know that her situation was compensable. She related, however, that she sought immediate treatment for her tooth as it was sensitive and she put off getting her tooth capped. There is no indication that appellant stopped work or has claimed disability due to this incident, the third criterion is also met. Accordingly, the Board finds that the record establishes that an injury occurred in the performance of duty.[11]

Because the Office made no findings as to whether appellant was entitled to reimbursement for her medical expenses, the case will be remanded for appropriate findings on this issue. After such further development as it considers necessary, the Office shall issue a *de novo* decision on appellant's entitlement to benefits.

CONCLUSION

The Board finds that the record establishes that an injury occurred in the performance of duty on August 18, 2000.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(1)(a)-(c) (June 1995); *see also Timothy D. Douglas*, 49 ECAB 558 (1998).

[11] *Jussara L. Arcanjo*, 55 ECAB ___ (Docket No. 03-1137, issued January 22, 2004); *Pearlene Morton*, 52 ECAB 493 (2001).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this opinion.[12]

Issued: October 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] On appeal, appellant submitted medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c).