United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 12-596**
	)	**Issued: April 11, 2013**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, AMISTAD NATIONAL RECREATION AREA, Del Rio, TX, Employer	)	

Appearances:
David B. Marvel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 25, 2012 appellant, through his representative, filed a timely appeal from the November 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which rescinded its acceptance of his claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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The issue is whether OWCP properly rescinded its acceptance of appellant's claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 30, 2010 appellant, a 43-year-old engineering equipment operator, sustained a traumatic injury when his vehicle was struck from behind by a tractor trailer. He was commuting from work. Appellant stopped at a store to get fuel and went to the stop sign at the intersection. Traffic was heavy. Appellant tried to go but felt he was not going to make it, so he stopped. His car was struck by a semitrailer. Appellant was diagnosed with a neck strain.

Appellant's claim form contained the following controversion from the employing establishment: "We believe this injury did not occur in the performance of duty. Claimant was returning home after work on a public highway. We believe this would not be compensable under the 'Going and Coming Rule.'"

The record reflects that appellant lived and regularly worked in Del Rio, Texas. His regular work hours were 7:00 a.m. to 3:30 p.m. At the time of the accident, however, appellant was on an extended detail to Fort Sumter, South Carolina, which began on November 2, 2009. His lodging, meals and incidentals were paid for by Fort Sumter National Monument. Further, Fort Sumter National Monument paid for appellant's travel to South Carolina and for his return to his "home park," the Amistad National Recreation Area in Del Rio, Texas, at the end of his detail.

OWCP held a conference with appellant's immediate supervisor, who was the chief administrator. The purpose of the conference was to determine whether appellant was in a temporary-duty status when the injury occurred. The supervisor confirmed that appellant was on temporary duty and was on an extended detail to Fort Sumter, South Carolina, from Amistad in Del Rio, Texas. She stated that appellant was in a personal vehicle when the injury occurred. Informed that appellant's claim contained a controversion statement indicating that the injury did not arise in the performance of duty, the supervisor stated that appellant was in the performance of duty, as he was on a temporary-duty assignment.

OWCP received an Official Temporary Duty Traveler Authorization showing that appellant was in a temporary-duty status on September 30, 2010. It confirmed his "Detail @ F[or]t Sumter National Monument, SC." The form showed that he received a *per diem* for meals and incidental expenses. Appellant was given a government charge card for authorized actual expenses.

OWCP also received a response to appellant's claim from an Administrative and Concessions Management Specialist in Del Rio, Texas. The specialist advised that appellant was 10 months into his detail to Fort Sumter when the accident occurred. Due to the extended nature of the detail, she would consider appellant's time in Fort Sumter to be a temporary relocation to a new duty station. The specialist stated that the accident would probably be considered on appellant's "regular commute" and would fall under the Going and Coming Rule.

On November 22, 2010 OWCP accepted appellant's claim for the condition of neck sprain. It denied continuation of pay because he did not file his notice of injury within 30 days.

Appellant requested reconsideration and submitted evidence to establish that the accident took place on September 30, 2010, making his notice of injury timely. The administrative and concessions management specialist contended that appellant was commuting from work.

The National Park Service's Regional Program Manager for Workers' Compensation in Oakland, California, notified OWCP that he was a former OWCP senior claims examiner and that it was he, not appellant's immediate supervisor and chief administrator, who entered the controversion statement on the claim form. He explained that, as the detail was an extended one, appellant was living near Fort Sumter: "It was in going and coming from his temporary living quarters to his temporary-duty station at Fort Sumter that he was injured." Both the temporary living quarters and the temporary-duty station, the program manager observed, were pretty well settled. He regarded appellant's detail not as a one-time special mission, but a temporary change of duty station and housing arrangement. Consequently, the program manager argued, appellant was commuting at his own risk.

OWCP proposed to rescind its acceptance of appellant's claim. It explained that information submitted by his local administrative management specialist established that he had a fixed duty station; therefore, his trips to and from work were not considered to be in the performance of duty. OWCP concluded that it had erroneously accepted appellant's claim because it did not recognize that he had a fixed-duty station.

Appellant's representative explained that appellant was on a temporary dispatch to Fort Sumter to cover for a regular Fort Sumter employee who was unable to work due to a disability. Appellant fit a particular need for the National Park Service, in that he could serve as a boat captain to ferry park personnel to and from Fort Moultrie and Fort Sumter, which was in the middle of Charleston Harbor. Although the length of time that appellant spent in South Carolina might be unusual in the context of temporary duty, this was only due to the fact that he was covering for another Park Service employee who was out on leave for an unknown duration. The representative noted that appellant was reassigned to this temporary duty several times due to the National Park Service's need for him to remain in the Charleston area. "It is apparent that [his] time spent in South Carolina was for the benefit of and at the direction of the National Park Service."

The representative argued that appellant was returning from his temporary-duty station at Fort Sumter National Park to his apartment in Beresford Commons when the accident occurred, and therefore his injury should be covered. Appellant's representative noted that, if appellant had been reassigned to Fort Sumter, the claim should have been handled through Fort Sumter's compensation personnel. The fact that it was being handled by Amistad personnel established that appellant was permanently assigned to Amistad and was only on temporary duty at Fort Sumter.

In a March 25, 2011 decision, OWCP rescinded its acceptance of appellant's claim. It found that appellant was in a travel status at the time of his injury. Because he had a fixed place of employment, his injury while traveling from his place of employment to his residence was due to hazards shared by other travelers. The fact that the employer paid for his residence was not sufficient to bring his injury into coverage. As appellant was returning home from a fixed work

location, OWCP applied the Going and Coming Rule to find that he was not in the performance of duty.

Appellant, through his representative, requested reconsideration. The representative submitted travel vouchers to establish that appellant was in travel status at the time of his injury. The travel vouchers noted his residence as Del Rio, Texas, his permanent department as the Amistad National Recreation Area, his travel as temporary duty, and his employment at Fort Sumter as a "detail." The representative argued that this was conclusive evidence as to appellant's travel status at the time of injury.

Appellant's representative also argued that the assignment was limited to specific 120-day periods; the assignment was for a specific, limited purpose; it was always contemplated that appellant would return to his home duty station; appellant's wife and child remained in Del Rio, Texas; and he was injured while commuting to a temporary residence that was provided by Fort Sumter. "The National Park Service gave [appellant] a temporary-duty assignment that required [him] to travel to Fort Sumter to a temporary residence chosen by [the National Park Service]. Therefore, his route of travel at the time of his injury was required by the temporary duty, and there appears to be no question that he was in travel status."

The Regional Program Manager for Workers' Compensation in Oakland, noted that the Board decision in *Jon Louis van Alstine*,[2] addressed whether the employee's injury while going to work was covered by the "special errand" exception to the Going and Coming Rule. The employee's usual duty station was in Pomona, California, eight miles from his home. He had fixed hours from 6:00 a.m. to 3:30 p.m. In July 1998 he was assigned to Norco, California, a duty station to which he was periodically assigned the previous two years. The employing establishment reimbursed him for the additional 13-mile commute. The employee had been working in Norco for about a month when, while traveling from his home to work, he sustained severe injuries in a motor vehicle accident. The Board found that the injury did not occur during a special errand: the evidence of record did not establish any degree of inconvenience or urgency, nor did it show that the trip, in and of itself, constituted a substantial part of any service for which he was employed. The record instead showed that the employee was proceeding from his home to the Norco work site, a trip he made every day to go to work and similar to his commute to and from work in Pomona.

In a decision dated November 4, 2011, OWCP reviewed the merits of appellant's claim and denied modification of its March 25, 2011 decision. It found that his trips to and from work during his assignment to Fort Sumter were not in the performance of duty. OWCP reasoned that because appellant was on an extended detail when the injury occurred, his detail no longer met the normal definition of temporary-duty assignment; it was a detail in which he had established housing. The circumstances were more in line with a regular commute to work. OWCP noted that appellant had stated that he was on the way "home" when the accident occurred; thus he considered his South Carolina residence as his home and not an apartment or temporary lodging.

[2] 56 ECAB 136 (2004).

On appeal, appellant contends that OWCP ignored case precedent establishing that FECA covers an employee 24 hours a day for any injury resulting from activities incidental to a temporary-duty assignment away from his regular place of employment.

LEGAL PRECEDENT

FECA provides compensation for the disability 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."[4] An injury is said to arise in the course of employment when it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in doing something incidental thereto.[5]

It is well established that FECA's protection extends to an employee who is on a temporary assignment or special mission 24 hours a day while the employee is engaged in activities essential or incidental to such temporary duty or special mission.[6]

OWCP may review an award for or against the payment of compensation at any time on its own motion or on application.[7] The Board has upheld OWCP's authority to reopen a claim at any time on its own motion and, where supported by the evidence, to set aside or modify a prior decision and issue a new decision.[8] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can be set aside only in the manner provided by the compensation statute.[9]

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provisions, where there is good cause for so doing, such as mistake or fraud. Once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, OWCP later decides that it erroneously accepted a

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *C.K.*, Docket No. 12-1347 (issued January 17, 2013); *see Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952). *See generally* 1 Arthur Larson & Lex Larson, Larson's Workers' Compensation Law, Chapter 121 (June 2006) (meaning of "course of employment").

[6] *George W. Stark*, 7 ECAB 275 (1954).

[7] 5 U.S.C. § 8128(a).

[8] *Eli Jacobs*, 32 ECAB 1147 (1981).

[9] *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.[10]

ANALYSIS

The Board will review the principles behind the time and place elements of work connection and how those principles differ between employees with fixed hours and a fixed place of work and employees whose injuries arise during a temporary assignment or special mission away from their usual workplace, particularly in the context of going to and coming from work.

The course of employment requirement tests work connection as to time, place and activity. It demands that the injury be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to employment.[11]

As to employees having fixed hours and place of work, injuries occurring on the premises while they are going to and from work before or after working hours or at lunchtime are compensable. But if the injury occurs off the premises, it is not compensable, subject to several exceptions. Underlying some of these exceptions is the principle that course of employment should extend to any injury which occurred at a point where the employee was within the range of dangers associated with the employment.[12]

While the employment is the cause of the worker's journey between home and factory, it is generally taken for granted that workers' compensation was not intended to protect against all the perils of that journey. Between these two extremes, a compromise has been arrived at, largely by case law, with a surprising degree of unanimity: for an employee having fixed hours and place of work, going to and coming from work is covered only on the employer's premises.[13] The term "premises" includes the entire area devoted by the employer to the industry with which the employee is associated.[14]

When an employee is on a temporary assignment or special mission away from his employer's premises, FECA's protection extends 24 hours a day while the employee is engaged in activities essential or incidental to such temporary duty or special mission.[15]

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[10] *Walter L. Jordan*, 57 ECAB 218 (2005).

[11] Larson, *supra* note 5 at Chapter 12.01.

[12] *Id*. at Chapter 13.

[13] Larson, *supra* note 5, § 13-01(1). *See also J.C.*, Docket No. 12-1430 (issued January 9, 2013) (such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers); *Edith F. Bolet*, 6 ECAB 245 (1953).

[14] Larson, *supra* note 5, § 13.04

[15] *George W. Stark*, 7 ECAB 275 (1954). For coverage during the journey to and from the location of the temporary assignment or special mission, see generally Larson, *supra* note 5, Chapter 25.

William K. O'Connor[16] is the Board's leading case on employees injured during a temporary assignment or special mission. The employee was regularly employed in New York City, New York, but assigned for a period of 30 days to an office in Pittsburgh, Pennsylvania. During this assignment, he was under travel authorization and received *per diem* expenses. The employee's workday terminated at 5:00 p.m. Shortly thereafter, he and several fellow supervisors, departed for a restaurant where they had dinner together. Following the dinner, the employee and one of his fellow supervisors went for a short walk, after which he boarded a street car to go to his hotel. He left the street car at a point diagonally across the street from his hotel. At about 7:30 p.m., the employee was struck by a passing motorist while waiting on a safety zone for the traffic signal to change.

The Board characterized the facts as a typical case of an employee injured in an off-premises accident while on a special mission for his employer. The rule in such cases, the Board stated, was that an employee on a special mission for his employer remains in the course of employment not only during his actual work time but in respect to "all normal incidents of his trip." The Board quoted the United States Court of Appeals for the District of Columbia, which stated the same rule:

> "The 'course of employment' on a specified errand, ordered by the employer, to a place different from the regular place of employment, includes all of the ordinary incidents of the errand which the employer would normally contemplate as occurring in the course of it. Thus, when the employing firm sent this lawyer, otherwise engaged in practice in the District of Columbia, on a business trip for specific purposes, all the natural incidents of that trip which would be contemplated by the employer, such as easting of meals in ordinary places at ordinary times, were in the course of that employment. This is not only the normal concept established in the business world, but fits the intent of the law as to coverage against injury."[17]

The Board found that the employee in *O'Connor* was en route to his hotel after an evening meal and a short walk, "all normal incidents of the mission." As the Board observed:

> "Coverage of an employee under the compensation law while he is on a special mission should not take the characteristics of a kaleidoscope wherein he is protected under the law against one injury one minute and unprotected the next. An employee who has been ordered to proceed to a distant city and who, after having established himself in a hotel there, is injured in a street accident by an automobile while returning to his temporary abode after working hours, seems clearly to have been in an employment status and to have been injured as a result of a risk created by the employment. Why should not the government as employer in such case bear the burden of the injury of one of its employees who was where he was, at the time he was, solely because of his mission on behalf of such employer? It is no answer to say that at the time, the employee was

[16] 4 ECAB 21 (1950).

[17] *Hurley v. Lowe*, 168 F.2d 553 (D.C. Cir.), *cert. denied*, 68 S. Ct. 1338 (1948).

> performing a personal act, in that he would have had to eat, exercise, or return to his place of abode whether in Pittsburgh or New York, or that he is not covered for after-hour off-premises injuries where he is 'transferred temporarily for a fixed period to a location away from his home.' The fact is, were it not for the mission undertaken at the direction of his employer, he would not have encountered the particular traffic hazard or risk which caused his injuries. It was the employment which brought him to that place and exposed him to that risk."

After explaining the principle behind the rule, the Board in *O'Connor* addressed the distinction between a special mission and a transfer to a new location, a distinction that is critical to the determination of the present appeal. It is difficult, the Board noted, to place a time concept upon the key word "temporary." In instances where employees may perform services for greater or lesser periods away from their home stations, the safe guide to distinguishing between special missions and transfers to new locations is whether the employee was regarded as in travel status, so far as subsistence or *per diem* is concerned. Presumably, employees are not paid subsistence or *per diem* unless they are performing travel and a mission away from their home station. The fact that subsistence or *per diem* is paid would fix *prima facie* the status as one of travel and the inference of travel status would necessarily have to be rebutted by evidence that the employer intended the employee to remain indefinitely at his new location.

O'Connor enunciated a sound and liberal doctrine which the Board most heartily reaffirmed two years later in *Carmen Sharp*.[18] Sharp recognized that the ambit of employment in special mission cases is much more commodious that in the more typical employment situation wherein the employee reports for work during definite hours upon the industrial premises.

Sharp explained that, if an injury is sustained by virtue of or while doing something normally incidental to the employment, it is sustained "in the performance of duty" or "arises out of and in the course of employment," whether on the premises or off the premises. The phrase "special mission" was a bellwether indicating that the ambit of the employment in such cases is broad, and that, unlike more ordinary employment situations, many off-premises, after-hours acts of the employee may be incidental to the employment because such acts are incidental to the accomplishment of the mission and because the employment exposes the employee to the particular risk.

Although it was true in *Sharp* that the employee's detail was not for a definite period of time, it was also true, and demonstrable in the record, that both the employer and the employee contemplated the employee's eventual return to the home station. *Per diem* was paid for the very reason that the employee's stay was for only a limited period, rather than for an "indefinite" period. The Board held that the employee was detailed as distinguished from transferred.

Under ordinary circumstances, the trip which an employee on a temporary assignment or special mission makes between his temporary abode and his workstation is a normal incident of

[18] 5 ECAB 13 (1952).

his employment. So explained the Board in the case of *Frances A. Taylor*.[19] The employee worked in the New York City headquarters. He was sent to Martin, Tennessee, for a temporary assignment of approximately 180 days, or about half a year. A *per diem* allowance was authorized for this period, but he was not reimbursed for travel between his duty station in Martin and his temporary place of abode.

Initially, the employee stayed at a motor court and a rooming-house in Martin. With the arrival of his wife, he moved into a furnished apartment in Jackson, Tennessee, approximately 50 miles from Martin. One morning, while driving to work from his place of abode, the employee was fatally injured when his car collided with another car approximately 17 miles from Martin.

The Board observed that had the accident occurred on a trip to work while the employee had his abode in Martin, there would be no question as to his widow's entitlement to compensation benefits. The narrow point for determination was whether, by moving to Jackson in order to establish a temporary abode suitable to him and his wife, the employee had deviated from the normal activities incidental to his employment to the extent that the fatal trip to work was outside the course of his employment. The Bureau (OWCP) argued that the trip was a personal matter arising out of the employee's desire to live with his wife while actually in a travel status and was not a reasonable incident of the employment.

The Board found it a normal and reasonable incident of the employment -- and consistent with public policy -- for an employee on a temporary assignment of such length away from his home station, an employee who spent the greater part of his time in travel status, to establish a temporary home suitable to him and his wife whenever circumstances permit. "It is likewise a normal and reasonable incident of the employment for an employee to travel from his temporary home to his work location." In the majority's view, the mileage between the place of abode and the place of employment did not in any way alter the essential employment relationship of the trip to work.

To summarize, for an employee having fixed hours and place of work, going to and coming from work is covered only on the employer's premises. Employees on a temporary assignment or special mission for their employers, however, are in a class by themselves[20] and enjoy the protection of FECA 24 hours a day while engaged in activities essential to or reasonably incidental to the mission. The Board has held that it is a normal and reasonable incident of the employment for an employee on a temporary assignment or special mission to travel between his temporary home and his work location.

The evidence in this record clearly establishes that appellant was on a temporary assignment or special mission in South Carolina at the time of his injury. Appellant's immediate supervisor, the chief administrator, confirmed his status. An Official TDY Traveler

[19] *Frances A. Taylor (Leigh S. Taylor)*, 8 ECAB 449 (1955) (Shaffer, Alternate Member, dissenting); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, 2.804.6.a (employees do not generally have the protection of FECA when injured en route between work and home, but one well-established exception to this general rule applies where the employment requires the employee to travel).

[20] *Miss Leo Ingram*, 9 ECAB 796 (1958).

Authorization documented it: appellant was in a temporary-duty status and detailed to the Fort Sumter National Monument in South Carolina. He received subsistence or *per diem*, or what *O'Connor* termed the "safe guide" to distinguishing between special missions and transfers to new locations. Travel vouchers also confirmed appellant's temporary duty at the time of injury. Appellant's lodging in South Carolina was paid for upfront and directly by Fort Sumter National Monument, as were his meals and incidentals. Fort Sumter National Monument paid for his travel to South Carolina. At the end of his detail, it also paid for his return to his "home park," the Amistad National Recreation Area in Del Rio, Texas. Although the length of his stay was unknown, it must be said, in the words of *Sharp*, that both the employer and the employee contemplated the latter's eventual return to the home station in Del Rio, Texas. As appellant's representative argued, if appellant were in fact transferred to a new duty station in Fort Sumter, his claim for compensation should have been handled through Fort Sumter's compensation personnel. It was handled instead by the personnel at his fixed place of work in Del Rio.

As to the length of appellant's temporary duty in South Carolina, *O'Connor* acknowledged that it is difficult to place a time concept upon the key word "temporary." Employees are presumably not paid subsistence or *per diem* unless they are performing travel and a mission away from their home station. Appellant received subsistence or *per diem* at the time of his injury. This fact fixes *prima facie* his status as one of travel and his coverage under FECA as broad.

When OWCP proposed to rescind its acceptance of appellant's injury claim, it explained that it did not recognize that he had a fixed duty station in South Carolina: an Administrative and Concessions Management Specialist in Del Rio, Texas, "showed that he had a fixed duty station." That is not what the specialist advised OWCP. She advised that appellant was 10 months into his detail to Fort Sumter when the accident occurred. The specialist then offered her personal opinion that, due to the extended nature of the detail, she would view appellant's time in Fort Sumter to be a temporary relocation to a new duty station.

That is a critically different communication than if the specialist had offered OWCP documentary evidence showing that appellant's temporary assignment was on some date officially changed to a transfer, such that Fort Sumter, not Amistad, was now his new duty station, his new fixed place of work. She offered no such evidence. Indeed, official records show quite the contrary, that appellant's permanent duty station remained in Texas and that he was still on temporary duty in South Carolina at the time of injury. When it accepted appellant's claim, OWCP did not recognize that appellant had a fixed duty station in South Carolina because the evidence did not show it.

The Regional Program Manager for Workers' Compensation in Oakland, California acknowledged that appellant was injured traveling between his temporary living quarters and his temporary-duty station at Fort Sumter. It was his opinion, as the detail was an extended one, that both were pretty well settled such that this was not a one-time mission but a temporary change-of-duty station. Again, this is a perspective that finds no support in any official action taken by the National Park Service. Apart from the contention that an employee's protection under FECA during a temporary assignment or special mission wears off at some ill-defined point in time -- the evidence presented in this case reflects that appellant remained on temporary duty at the time of his injury.

The contention that appellant had temporarily relocated to a new duty station, or had established a second home, served one purpose and one purpose only: to deny FECA coverage for his injury. For all other ostensible purposes, appellant's fixed place of work was in Texas, whence his employer temporarily assigned him to South Carolina to fulfill a special mission. The employer was free, of course, to transfer appellant to Fort Sumter National Monument and if it had, his injury while driving home after work might have fallen under the Going and Coming Rule for off-premises injuries. The employer continued to renew his temporary duty authorization, continued to pay *per diem*, continued to pay for his lodging, and continued to maintain him in a temporary-duty status for an extended period of time. This provided appellant coverage 24 hours a day so long as he engaged in activities essential or incidental to his temporary assignment or special mission.[21]

Appellant's detail distinguishes this case from *Sherri LaMeire (Michael J. LaMeire)*,[22] in which the employee was transferred from Palo Alto, California, to Phoenix, Arizona, in accordance with the terms of his employment contract. He was required to accept the assignment; failure to accept relocation was cause for separation. The employee contracted valley fever the following year.

The Board noted that the employee's living quarters in Phoenix were not furnished by the employer, nor was there any provision for an allowance for living quarters. The employee had fixed hours and place of work and the employer exercised no control over nonwork activities. The employee's duty in Phoenix was for an indefinite, if not permanent, term and was not governed by any special circumstances of employment, nor was his transfer for a limited purpose. Further, it was not contemplated that he would eventually return to the California station. The Board affirmed OWCP's decision to vacate its acceptance of the claim. The evidence indicated that the employee contracted the disease in off-duty recreational activity.

The Board finds that appellant's injury arose from an activity that was essential or incidental to his temporary assignment. The fact is, were it not for the mission undertaken at the direction of his employer, he would not have encountered the particular traffic hazard or risk which caused his injuries. It was the employment which brought him to that place in South Carolina and exposed him to that risk. For this reason, the Board finds that appellant's injury on September 30, 2010 arose in the course of his employment.

In its March 25, 2011 decision, OWCP found that the evidence supported appellant's travel status at the time of injury. At the same time, it found that he was returning "home" from a "fixed work location." This is an untenable mixture of competing legal theories. The evidence

[21] This is sometimes loosely worded as "incidental to the special duties," but such language does not capture the "ambit of employment" (*Sharp*) or breadth of coverage for employees on a temporary assignment or special mission for their employers. Because the employer ordered the employee to a place different from the regular place of employment, coverage extends to all of the ordinary incidents of the errand which the employer would normally contemplate as occurring in the course of it. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5.b(2) (August 1992) (when workers are required to perform some or all of their duties away from the employer's premises, OWCP must determine whether, at the time of injury, the employee was engaged in an activity which was a reasonable incident of the assignment).

[22] 33 ECAB 1021 (1982).

compelled OWCP to find that appellant was on temporary duty. At the same time, it attempted to cast him as a transferred employee, one with a new home and new duty station in South Carolina. By definition, however, an employee on a temporary assignment or special mission has only a temporary-duty station and temporary place of abode at the distant location to which he is sent. Appellant's permanent-duty station and his actual home were in Texas.

It is this very circumstance that broadens coverage during temporary assignments or special missions. As the Board explained in *Theresa B.L. Grissom (Thomas H. Grissom)*, which reviewed such cases:

> "In each and every instance the employee had been directed, as part of his duties, to remain in a particular place or locality until directed otherwise or for a specified length of time. In those circumstances, the rule applied is simply that the employee is not expected to wait immobile, but may indulge in any reasonable activity at that place, and if he does so the risk inherent in such activity is an incident of his employment."[23]

Grissom also set forth the legal principle that it is OWCP's burden, in a case involving a special mission, to establish that a deviation from the scope of the employment occurred. OWCP has not met that burden here.

The case of *Jon Louis van Alstine*, offered by the Regional Program Manager for Workers' Compensation in Oakland, has no bearing. The employee in *Alstine* never left home. His employer did not order him to some distant location. The employee had no need to establish a new abode in order to report to his new assignment. In short, *Alstine* was not a case of temporary assignment or special mission, and the Board so held. *Alstine* was instead a case that dealt with the "special errand" exception to the Going and Coming Rule.

The Board finds that OWCP did not meet its burden of proof to justify the rescission of appellant's accepted claim. Its decision is not supported by the evidence or case law. The Board will therefore reverse OWCP's November 4, 2011 decision and remand the case for the payment of appropriate compensation benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden to justify the rescission of appellant's accepted claim.

[23] 18 ECAB 193 (1966), *citing Davis v. Newsweek Magazine*, 305 N.Y. 20, 27-28, 110 N.E.2d 406, 409 (1953).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2011 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action.

Issued: April 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board