U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOEL BELCHICK, executor of the estate of CLAUDINE BELCHICK and U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI

Docket No. 98-921; Submitted on the Record;
Issued November 3, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that the employee was injured in the performance of duty.

The Board finds that the employee was not injured in the performance of duty.

The employee filed a claim on February 10, 1997 alleging on that February 4, 1997 she was injured in the performance of duty when she slipped on ice. A witness' statement on the claim form indicated that the employee fell in the parking lot across from the employing establishment where she had been told to park for work. On the reverse side of the form, the employee's supervisor indicated that appellant was not on employing establishment property at the time of her injury.

The employing establishment submitted an accident report indicating that the employee was requested to report to work early, that she parked in the parking lot across from the employing establishment where she usually parked. The weather was cold and rainy and ice formed. The employee slipped and fell in the parking lot breaking her ankle and leg.

The Office of Workers' Compensation Programs conducted a telephonic conference with the employee on February 4, 1997. The employee stated that she came into work one hour early on February 4, 1997 in order to work overtime. She stated that she parked in a city owned and maintained lot. This lot is directly across from the employing establishment and many other employees park there. There is no cost to park in the lot and the lot is open on a first come, first served basis to the general public including shoppers and visitors. The employee slipped approximately 10 steps from her car at the intersection of the parking lot and the street, breaking

her right leg and ankle. The employee signed the memorandum of conference on March 10, 1997 indicating that the information contained was accurate.

By decision dated March 17, 1997, the Office denied the employee's claim, finding that she was not in the performance of duty at the time her injury occurred.[1]

Congress, in providing for a compensation program for federal employees, 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 of any employee/employer relation.[2] The Federal Employees' Compensation Act 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 term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."[4] "In the course of employment" deals with the work setting, the locale and time of injury.[5] In addressing this issue, the Board has stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in her master's business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto."[6]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury 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 is derived or an employment requirement gave rise to the injury.[7]

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[1] Following the Office's March 17, 1997 decision, appellant submitted additional new evidence. As this evidence was not considered by the Office in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

[2] *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948); *Christine Lawrence*, 36 ECAB 422, 423-24 (1985).

[3] *See* the Act, 5 U.S.C. §§ 8101-8193.

[4] *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

[5] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

[6] *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

[7] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

As to an employee having fixed hours and a fixed place of work, an injury occurring on the premises while the employee is going to and from work before or after working hours or at lunch time is compensable, but if the injury occurs off the premises, it is not compensable, subject to certain exceptions.[8]

As an injury on the premises going to work is covered under the Act, the Board must address whether the employee was on the premises of the employing establishment at the time the injury occurred. The Board has stated:

> "The term 'premises' as it is generally used in workmen's compensation law, is *not* synonymous with 'property.' The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases, 'premises' may include all the 'property' owned by the employer; in other cases, even though the employer does not have ownership and control of the place where the injury occurred the place is nevertheless considered part of the 'premises.'"[9] (Emphasis in the original.)

The Board has also pointed out the factors which determine whether a parking lot used by employees may be considered a part of the employing establishment's "premises" including whether the employing establishment contracted with the owner for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot and whether other parking was available to the employees. Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the "premises" of the employing establishment. The premises doctrine is applied to those cases, where it is affirmatively demonstrated that the employer owned, maintained, or controlled the parking facility, used the facility with the owner's special permission, or provided parking for its employees.[10]

There is no evidence in the case record that the employer owned, maintained nor controlled the parking facility where the employee parked, nor that it was used with the owner's special permission. The evidence of record consisting of the supervisor's statements and the memorandum of conference, indicate that the employee at her own discretion parked in a public lot. Therefore, the employee's injury did not occur as an exception to the premises doctrine.

Another exception to the rule is the proximity rule which the Board has defined by stating that under special circumstances the industrial premises are constructively extended to hazardous conditions which are proximately located to the premises and may therefore be considered as hazards of the employing establishment. The main consideration in applying the

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[8] *Michael K. Gallagher,* 48 ECAB ___ (Docket No. 95-2056, issued August 5, 1997).

[9] *Wilmar Lewis Prescott,* 22 ECAB 318, 321 (1971).

[10] *Diane Bensmiller,* 48 ECAB ___ (Docket No. 95-3108, issued September 15, 1997).

rule is whether the conditions giving rise to the injury are causally connected to the employment.[11]

The commonest ground of extension of a hazardous condition is that the off-premises point at which the injury occurred lies on the only route or at least on the normal route, which employee's must traverse to reach the premises and that, therefore, the special hazards of that route become the hazards of the employment.[12] This exception contains two components. The first is the presence of a special hazard at the particular off-premises point. The second is the close association of the access route with the premises, so far as going and coming are concerned.[13]

As the employee was injured when she slipped and fell due to icy conditions walking from her car in an off-premises parking lot, the record does not support the application of the exception to the off-premises rule. The hazard encountered by the employee, an icy pavement, was not an exceptional nor uncommon hazard, rather it was a hazard that is faced by all those who walk during certain weather conditions. This case therefore fails the component of the special hazard rule, that is, the presence of a special hazard at the particular off-premises point.

The employee also argued that she was instructed to report to work early on the day of the injury and that this instruction contributed to her injury. The Board has held that while the employment is the cause of the journey between home and work, worker's compensation is not intended to protect employees against all the perils of the journey.[14] As the employee's injury occurred off the premises while she was going to work and because the record fails to support the application of an exception to the off-premises rule, the Board finds that the employee's injury did not arise out of and in the course of her federal employment.

[11] *Gallagher, supra* note 8.

[12] *Id.*

[13] *Id.*

[14] *Id.*

The March 17, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
November 3, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member