United States Department of Labor
Employees' Compensation Appeals Board

LINDA D. HART, Appellant	)	
and	)	**Docket No. 04-2004**
	)	**Issued: January 26, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 11, 2004 appellant filed a timely appeal of an April 13, 2004 decision in which the Office of Workers' Compensation Programs denied her claim that she sustained a traumatic injury in the performance of duty on September 26, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on September 26, 2002.

FACTUAL HISTORY

On September 26, 2002 appellant, then a 51-year-old registered nurse, filed a Form CA-1, traumatic injury claim, alleging that at 6:45 a.m. on that day she slipped and fell on a brown substance while walking with Janet Lindsay, a coworker, in a hallway at work. She alleged injury to her right and left sides. An employing establishment supervisor, JoAnn

Capobianchi, human resources specialist, controverted the claim, stating that it did not occur in the performance of duty as appellant's regular tour began at 8:00 a.m. and, at the time of the injury, she was walking with another employee, going to an unauthorized locker in an unauthorized locker room.

By letter dated October 16, 2002, the Office informed appellant of the evidence needed to support her claim. She submitted a treatment note dated September 26, 2002 in which Dr. Guirlette Grodecki, Board-certified in internal medicine and an employing establishment physician, diagnosed acute exacerbation of chronic low back pain. Appellant also submitted disability slips advising that she could not work. In a witness statement dated September 26, 2002, Ms. Lindsay advised that she witnessed the fall, and a maintenance worker attested that he cleaned up the area.

In a statement dated November 7, 2002, appellant again described the incident. She related that she had a previous claim for an April 20, 2000 injury, file number 030251389. Due to this prior injury, she was unable to ride public transportation and therefore had someone drive her to work, arriving between 6:30 and 7:30 a.m daily.

By decision dated November 18, 2002, the Office denied the claim, finding that the injury did not occur while appellant was in the performance of duty.

On November 20, 2002 appellant, through counsel, requested a hearing. She submitted medical evidence advising that she could not work,[1] and Form CA-7, claims for compensation.

At the hearing held on August 29, 2003, appellant testified that, following the April 2000 employment injury, she did not return to work until May 2002 when she began working five hours per day.[2] She reiterated that she came to work early because of transportation needs and had been off work since September 26, 2002. She testified that she was not "limited" to starting work at 8:00 a.m. and would frequently begin work early and leave early.

In a statement dated October 1, 2003, Ms. Capobianchi advised that appellant's tour of duty began at 8:00 a.m. and ended at 1:00 p.m. She stated that appellant was "not considered or authorized to be officially or incidentally in the performance of her light-duty work prior to the start of her 8:00 a.m. tour of duty" and that appellant was not told that she was considered as reporting for duty as soon as she walked in the door. Ms. Capobianchi advised that appellant's supervisor did not provide any work assignments prior to appellant's tour hours, and that the employing establishment considered 15 to 30 minutes a reasonable time frame for an employee to report for work. It was noted that appellant's early arrival was for her own convenience. Ms. Capobianchi stated that, at the time of the September 26, 2002 fall, appellant was going with Ms. Lindsay to Ms. Lindsay's locker and that appellant's locker was on the opposite side of the building. Appellant was not authorized to begin work early or leave early at any time, and that

[1] The reports dated from May 16, 2000 to July 11, 2003 are from Dr. Richard T. Jermyn, an osteopath who is Board-certified in physical medicine and rehabilitation.

[2] The record indicates that the April 20, 2000 claim was accepted for lumbosacral sprain and lumbosacral radiculitis on the right.

appellant's tour of duty was not flexible. Attached was a copy of appellant's scheduled work hours from June 3 to September 6, 2002, all indicating that she began work at 8:00 a.m. daily.[3]

By decision dated November 24, 2003, an Office hearing representative affirmed the November 18, 2002 decision, finding that appellant was not in the performance of duty when she slipped on September 26, 2002 as it occurred prior to the start of her work tour.

On March 9, 2004 appellant, through her attorney, requested reconsideration. She submitted a diagram of the fifth floor of building 2 at the employing establishment, and a statement contending that she was in the performance of duty when the September 26, 2002 incident occurred.

In a decision dated April 13, 2004, the Office denied modification of the November 24, 2003 decision.

LEGAL PRECEDENT

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 his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[4] The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[5] In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[6] The facts must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[7]

The general rule, with regard to employees having fixed hours and places of work is that injuries occurring on the premises of the employing establishment, while the employees are going to or coming from work, before or after working hours, or at lunch time, are compensable, if occurring in the course of employment.[8] This includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts.[9] What constitutes a reasonable interval before and after official working hours

[3] Appellant received wage-loss compensation for three hours per day under claim number 030251389.

[4] *Roger Williams*, 52 ECAB 468 (2001).

[5] *George E. Franks*, 52 ECAB 474 (2001).

[6] *Mark Love*, 52 ECAB 490 (2001).

[7] *Eileen R. Gibbons*, 52 ECAB 209 (2001).

[8] *George E. Franks, supra* note 5.

[9] *Eileen R. Gibbons, supra* note 7.

depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the activity.[10]

ANALYSIS

Appellant alleged that she sustained an injury in the performance of duty when she slipped in an employing establishment hallway at 6:45 a.m. on September 26, 2002, approximately 1 hour and 15 minutes before her regular tour was to begin at 8:00 a.m.

In *Timothy K. Burns*,[11] the employee sustained injury after tripping over an elevated portion of a sidewalk on the employing establishment premises. The incident occurred at 6:40 a.m., approximately 20 minutes prior to his scheduled 7:00 a.m. tour of duty, and while he was walking for exercise before beginning work. The employee noted his practice of arriving early at work to avoid traffic congestion. The Board found that the employee failed to establish that his injury arose in the performance of duty as he was on the premises of the employer for purely personal reasons and not engaged in activities that could be characterized as reasonably incidental to the commencement of his work duties.

In *Nona J. Noel*,[12] the employee sustained injury when she fell on a sidewalk located on the employing establishment premises. In statements to the Office, she advised that she arrived at work an hour and one-half before the official starting time in order to avoid heavy traffic and to take advantage of the low cost breakfasts made available at the NCO club. The Board found that the employee's injury was not sustained while she was in the performance of duty.

Appellant stated that she arrived early because of her transportation needs. The Board finds that appellant's choice to arrive early to work to be of a personal nature and not related to her employment. Appellant contended that she was allowed to begin work early; however, Ms. Capobianchi advised that her official workday began at 8:00 a.m., that this was not flexible, and that appellant was not authorized to begin work early or leave early at any time. Appellant has not established that her workday began prior to 8:00 a.m. Further, the Board finds that appellant was not engaged in activities reasonably incidental to prepare for her workday. The record reflects that appellant was accompanying Ms. Lindsay to Ms. Lindsay's locker, a personal activity.[13] The Board concludes that the 1 hour and 15 minute interval between the time of the September 26, 2002 incident that occurred at 6:45 a.m. and the start of appellant's tour of duty at 8:00 a.m. does not constitute a reasonable interval before her scheduled workday.[14] She has failed to meet her burden of proof to establish that she sustained an employment injury.

[10] *Id.*

[11] 44 ECAB 125 (1992).

[12] 35 ECAB 439 (1983) and 36 ECAB 329 (1984).

[13] *Id.*

[14] *Id.*

CONCLUSION

The Board finds that appellant's slip and fall that occurred on September 26, 2002 was not sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 13, 2004 and November 24, 2003 be affirmed.

Issued: January 26, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member