

and bilateral hand abrasion and contusion.¹ The employing establishment controverted the claim as appellant was not on duty when the injury occurred. In a March 29, 2006 letter to the Office, the employing establishment stated that the parking lot was not immediately adjacent to the airport terminal, where appellant worked in a “sterile area” assigned by JFK. Additionally, the employing establishment indicated that it did not own, lease, operate or maintain the parking lot where appellant fell, nor did it have any authority over the shuttle bus and AirTrain services provided by JFK.²

In a May 24, 2006 decision, the Office denied appellant’s claim finding that he was injured while on route to work and, therefore, not in the performance of duty.

Appellant requested a telephonic hearing, which was held on October 4, 2006. He testified that the parking lot where he fell on March 15, 2006 was not open to the public, but used exclusively by JFK employees, including Transportation Security Administration (TSA) employees. The monthly fee for parking at JFK was \$50.00, of which he paid \$45.00. TSA subsidized the remaining \$5.00 monthly parking fee. Appellant also testified that there were no assigned spaces within the employee parking lot. He explained that he parked his car around 3:30 a.m. and was walking to catch the AirTrain when he tripped and fell forward onto his hands.

At the hearing, appellant submitted several employing establishment memoranda regarding parking in and around JFK. In the fall of 2003, the employing establishment advised employees of their responsibility to promptly pay their monthly parking fees. The employing establishment also advised its employees when new “2004” parking tags were available and warned that vehicles might be towed if the proper tag was not displayed. Another memorandum advised TSA employees about using the AirTrain service at JFK. An August 2004 memorandum advised TSA employees to be considerate when parking their personal vehicles on local neighborhood streets and cautioned that local police would ticket and tow violators.

After reviewing appellant’s hearing testimony, the employing establishment submitted an October 23, 2006 memorandum. It noted that the parking lot where appellant fell was controlled by the Port Authority and was made available to any JFK employee who personally chose to pay the Airport parking fee. The employing establishment further argued that appellant could have also obtained transit checks for the bus or train, but he chose to drive and park instead.

By decision dated November 24, 2006, the hearing representative affirmed the May 24, 2006 decision. The hearing representative found that the parking facility where appellant injured himself on March 15, 2006 was not part of the employing establishment premises. Therefore, appellant was not in the performance of duty at the time of his injury.

¹ Appellant returned to work on March 29, 2006, but later filed a recurrence of disability beginning April 18, 2006. He was subsequently diagnosed with a left wrist fracture and tear of the triangular fibrocartilage complex.

² The Port Authority of New York and New Jersey was responsible for managing and maintaining the facilities at JFK International Airport.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained "while in the performance of his duty."³ In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place when he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.⁴ For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.⁵ However, that same employee with fixed hours and a fixed workplace would generally not be covered when an injury occurs off the employing establishment premises while traveling to or from work.⁶ The reason for the distinction is that the latter injury is merely a consequence of the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.⁷

The employing establishment premises may include all the property owned by the employer.⁸ But even though an employer does not have ownership and control of the place where an injury occurred, the locale may nevertheless be considered part of the premises.⁹ For example, a parking lot used by employees may be considered a part of the employing establishment premises when the employer contracted for the exclusive use of the facility or where specific parking spaces were assigned by the employer.¹⁰ Other factors to be considered include whether the employer monitored the parking facility to prevent unauthorized use, whether the employer provided parking at no cost to the employee, whether the general public had access to the parking facility and whether there was alternate parking available for the employee.¹¹ An employee's mere use of an offsite parking lot, by itself, is not sufficient to demonstrate that the parking lot is part of the employer's premises.¹²

³ 5 U.S.C. § 8102(a) (2000).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB __ (Docket No. 05-977, issued February 10, 2006).

⁵ *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

⁶ *Idalaine L. Hollins-Williamson*, 55 ECAB 655, 658 (2004).

⁷ *Id.*

⁸ *Denise A. Curry*, *supra* note 5.

⁹ *Id.*

¹⁰ *Roma A. Mortenson-Kindschi*, *supra* note 4; *Diane Bensmiller*, 48 ECAB 675, 678 (1997).

¹¹ *Diane Bensmiller*, *supra* note 10.

¹² *Id.*

ANALYSIS

Appellant's regular work hours were 4:00 a.m. to 12:30 p.m., Tuesday through Saturday. His claimed injury occurred Wednesday, March 15, 2006 when he fell in the JFK airport parking lot at 3:25 a.m., prior to the commencement of his work shift. The Board finds that the JFK Airport parking lot where appellant fell on the morning of March 15, 2006 is not part of the employing establishment's premises.

While there is evidence that the employing establishment played a role in facilitating access to parking for its employees, the level of its involvement in this undertaking was not such that one could reasonably conclude that the employing establishment exercised control over the JFK Airport employee parking lot. This lot was not exclusive to TSA employees. Although it was closed to the general public, the parking lot was accessible to individuals who were not employed by TSA. While there was restricted access to the parking lot, there is no indication from the record that the employing establishment monitored the use of the parking lot so as to prevent unauthorized access. Also the employing establishment did not assign specific parking space to its employees, including appellant. He testified at the October 4, 2006 hearing that he parked wherever there was an available space, with the exception of those parking spaces designated for handicapped motorists. Appellant also testified that he paid 90 percent of the monthly parking fee. There is also evidence that TSA employees parked in the surrounding neighborhoods, thus indicating some other available parking was available. The record indicates that appellant's worksite was accessible via public transportation, thus, the employee parking lot was not the sole means of ingress and egress. Taking all these factors into consideration, the Board finds that the parking lot where appellant fell on March 15, 2006 was not part of the employing establishment's premises. Because appellant was injured off-premises while in route to work, his injury is not covered under the Act.

CONCLUSION

Appellant has not established that he was injured in the performance of duty on March 15, 2006.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board