United States Department of Labor
Employees' Compensation Appeals Board

R.O., Appellant	)	
and	)	**Docket No. 08-2088**
	)	**Issued: May 18, 2009**
CORPORATION FOR NATIONAL & COMMUNITY SERVICE, OFFICE OF PROCUREMENT SERVICES, Washington, DC, Employer	)	

Appearances:
Michael D.J. Eisenberg, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2008 appellant, through her representative, filed a timely appeal from the September 10, 2007 and April 21, 2008 merit decisions of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's February 15, 2007 low back injury arose in the course of employment.

FACTUAL HISTORY

On or about March 5, 2007 appellant, then a 43-year-old purchasing agent, filed a claim alleging that she sustained a low back injury in the performance of duty: "On Thursday,

February 15, 2007, Ms. Marilyn Brooks and I left the building to go to lunch. While walking on the sidewalk in front of the building, I slipped on a sheet of ice."

The employer advised that it did not own, operate or control the sidewalk in front of its building.[1] The employer added that appellant had left the building to go to lunch and was not engaged in official duties that required her to be off the premises at the time of her injury, nor was she performing an activity considered incidental to her assignments. Appellant simply slipped on the ice during her lunch break.

In a decision dated September 10, 2007, the Office denied appellant's claim for compensation on the grounds that her injury did not occur in the performance of duty. It found that appellant slipped on public property and accepted the same hazards of travel as any individual using public property.

Appellant, through an attorney, requested reconsideration. She argued that she was within a few feet of the employer's premises, on the sidewalk directly in front of the building. Appellant noted that the sidewalk was the only means of ingress and egress to the building. She argued that premises rule should apply.

In a decision dated April 21, 2008, the Office reviewed the merits of appellant's case and denied modification of its prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] 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 performance."[3] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[4]

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,

[1] The employer also advised that the sidewalk was not the building's property.

[2] 5 U.S.C. § 8102(a).

[3] 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).

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

subject to certain exceptions. Underlying some of these exceptions is the principle that course of employment should extend to any injury that occurred at a point where the employee was within the range of dangers associated with the employment.[5] The most common ground of extension is that the off-premises point at which the injury occurred lies on the only route, or at least on the normal route, which employees must traverse to reach the premises, and that therefore the special hazards of that route become the hazards of the employment.[6] 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.[7]

The Board has generally held that conditions caused by weather, including snow, ice and rain, are not special hazards. Rather they are dangers inherent to the commuting public.[8]

ANALYSIS

Appellant was not a traveling employee. As a purchasing agent, she had fixed hours and a fixed place of work. After leaving her building to go to lunch, appellant slipped and fell on a public sidewalk. Even if this public sidewalk were the customary means of access to the employing establishment for its employees, this does not alter the public nature of the sidewalk or render it a part of the employing establishment's premises.[9] So appellant's injury does not fall within the premises rule.

Further, appellant's injury does not fall within the exception for proximity. She argued that she was within a few feet of the employer's premises, and that the sidewalk was the only means of ingress and egress to the building. But the hazard that caused appellant's injury, ice or snow on a public sidewalk, is a hazard commonly faced by pedestrians in Washington, DC, during the winter.[10] So there was no special hazard at that particular off-premises point.

The Board finds that appellant's February 15, 2007 injury did not arise in the course of employment. It occurred during lunch, not at a time when she may reasonably be said to be engaged in her employer's business. It occurred on a public sidewalk, not at a place where appellant may reasonably be expected to be in connection with her employment. So the two overt physical indicia of work connection are not established. While having lunch may be considered incidental to one's employment under the personal comfort doctrine,[11] the premises

[5] *Jimmie Brooks*, 54 ECAB 248 (2002); *Syed M. Jawaid*, 49 ECAB 627 (1998).

[6] 1 ARTHUR & LEX LARSON, THE LAW OF WORKERS' COMPENSATION § 13.01(3) (2006).

[7] *Id*. at § 13.01(3)(b).

[8] *See Denise A. Curry*, 51 ECAB 158 (1991); *Syed M. Jawaid*, 49 ECAB 627 (1998).

[9] *Sallie B. Wynecoff*, 39 ECAB 186 (1987).

[10] *See Melvin Silver*, 45 ECAB 677 (1994).

[11] *See Nancy E. Barron*, 36 ECAB 428 (1985) (employee broke a tooth while eating breakfast at her desk).

rule explicitly excludes off-premises lunches from course of employment. The Board will therefore affirm the Office decisions denying appellant's claim for benefits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her February 15, 2007 low back injury arose in the course of employment.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2008 and September 10, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 18, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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