

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.M., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
PORTLAND INTERNATIONAL AIRPORT,  
Portland, OR, Employer**

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**Docket No. 10-1723  
Issued: August 23, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case submitted on the record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 15, 2010 appellant filed a timely appeal of the February 5 and April 19, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant's injury on December 19, 2009 was sustained while in the performance of duty.

**FACTUAL HISTORY**

On December 22, 2009 appellant, then a 57-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that at 6:55 p.m. on December 19, 2009 she sustained a right shoulder fracture. She had exited a door on the lower level of the airport terminal between carousels number five and six when a passenger stopped her to ask a question. After answering the question, appellant tripped over a roller bag of a second

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

individual and fell to the sidewalk. Her work shift was from 1:45 p.m. to 6:45 p.m. Wednesday through Saturday. On the claim form, the employing establishment noted that appellant had signed out to go home. Appellant was on her way to catch a bus to a parking lot when she was stopped by a passenger.

By letter dated December 24, 2009, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she provide a physician's report which included findings from examination, the results of all x-ray and laboratory tests, a diagnosis and medical opinion with medical rationale explaining how the reported work incident caused or aggravated her claimed injury. OWCP also requested that the employer provide additional information as to whether it owned, leased or controlled the property where the injury occurred; a diagram of the area where the injury occurred; the exact time of injury; whether it owned, leased, maintained or controlled the parking lot; whether parking spaces were checked for unauthorized vehicles and by whom; whether the parking lot was for the exclusive use of federal employees or used by the public; whether there were assigned parking spaces or a designated area for employees; whether parking was provided without cost to employees and whether other parking was available for employees.

Appellant submitted medical records pertaining to her right shoulder fracture and treatment.

On December 19, 2009 the employing establishment contended that appellant was not in the performance of duty when she provided customer service to a passenger who asked a question regarding an air carrier. Appellant was off duty and still in uniform.

In an incident investigation report dated December 19, 2009, the employing establishment stated that the incident of that date did not take place in its controlled area. It occurred on a sidewalk outside baggage claim carousels number five and six. The employing establishment contended that appellant's injury was caused by inattention. In a January 7, 2010 letter, it advised that her injury occurred on property owned or managed by the Port of Portland. Appellant's shift had ended at 6:45 p.m. on December 19, 2009.

In a February 5, 2010 decision, OWCP denied appellant's claim that she sustained an injury in the performance of duty on December 19, 2009. It accepted that she tripped over a passenger's roller bag approximately 10 minutes after signing out from work and sustained a right humerus fracture as a result of the fall. The injury did not occur on property owned, leased or maintained by the employing establishment and was not compensable because it did not arise out of the course of her federal employment. OWCP noted that appellant was on a sidewalk near an exit door when she fell.

In a February 10, 2010 letter, appellant requested reconsideration. She contended that, as a member of the customer service team, she was required to help passengers in all areas of the airport. In a December 26, 2009 letter, appellant described the December 19, 2009 incident. She signed out after completing her work shift at 6:45 p.m. As usual, appellant proceeded towards the "employee bus." She stated that people always stopped officers to ask for directions or help. It was understood by all uniformed officers that they should help the public at all times. Appellant answered a woman's question regarding the location of her baggage. Another woman was standing at the curb and holding the handle of a roller bag. As a car swerved in towards this woman, she became startled and backed up with her bag. The bag moved into appellant's path

and she clipped her left toe on the bag. Appellant lost her balance and fell to the ground onto her right shoulder. She proceeded to the employee bus but discovered that she would not be able to drive. Appellant returned to carousel number four and contacted Jerry Nichols, a supervisor, who called paramedics and Marsha Shanahan, a screening manager. She was helped by the paramedics until her husband arrived and then took her to Southwest Medical Center where she was diagnosed as having a broken right humerus.

In correspondence dated July 15, 2008 through April 15, 2009, the employing establishment noted that appellant was part of its customer service team and advised her about upcoming training sessions.<sup>2</sup>

An undated and unsigned statement, Jerry Nichols noted that as immediate supervisor he expected appellant to represent TSA and the mission by “being there for the traveling public.” Appellant was expected to remain courteous and assist the public in any manner that would facilitate their travel and movement throughout the airport.<sup>3</sup>

A second undated and unsigned statement from Don Headrick, a transportation security manager, noted his expectation that all officers when in uniform represented TSA throughout their commute to and from work. As a public service officer, appellant was expected to answer questions, be helpful and assist the public as necessary while in uniform.<sup>4</sup>

By letter dated March 18, 2010, Rick Williams, an administrative officer, submitted employing establishment directives regarding dress and appearance, responsibilities at work and while off duty, and conduct when at work for transportation security officers. He contended that appellant was off duty at the time of the December 19, 2009 incident as she had signed out at 6:45 p.m.

In a March 31, 2010 letter, appellant contended that the assistance she provided to the passenger on December 19, 2009 was in accordance with the required behavior of a uniformed officer and the training she received. To the best of her knowledge, uniformed officers were required to help anyone in need of assistance particularly while on the employer’s property. Officers were required to follow the employing establishment manuals and codes of dress and ethics.

In letters dated March 31, 2010, Mr. Nichols and Diane Crofts, a supervisor, stated that officers were expected to remain courteous and assist the public in any manner that would facilitate travel and movement throughout the airport.

In an April 15, 2010 letter, Director Michael T. Irwin stated that Mr. Headrick did not have the authority to change or modify employing establishment policy, which provided that employees who were no longer on duty were not covered by FECA. Director Irwin contended that appellant was off duty at the time of her December 19, 2009 injury. He stated that

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<sup>2</sup> It was noted that appellant would have the opportunity to complete “Engage” skills, in which team members assisted VIPs, elected officials, passengers with special needs or those who just needed a little extra care and attention as they process through security.

<sup>3</sup> Appellant handwrote annotation that Mr. Nichol was her “Pass. Supervisor.”

<sup>4</sup> Appellant identified Mr. Headrick as her “Pass. Screening Manager.”

Mr. Headrick's intent was to convey that the public views all uniformed employees as representatives of the TSA, even if the employee was off duty. While on or off duty, employees were expected to conduct themselves in a manner that did not adversely reflect on the employing establishment or negatively impact its ability to discharge its mission, cause embarrassment, or cause the public and/or the employer to question an employee's reliability, judgment or trustworthiness.

In an April 19, 2010 decision, OWCP denied modification of the February 5, 2010 decision. It found that appellant failed to establish that she was required to perform her work duties as a transportation security screener while not on official duty.

### **LEGAL PRECEDENT**

FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> 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.<sup>6</sup> In the course of employment relates to the elements of time, place and work activity.<sup>7</sup> 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 master's business, at a place when 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. As to the phrase in the course of employment, the Board has accepted the general rule of workers' compensation law that, off-premises injuries sustained by employees having fixed hours and place of work, while going to and from work, before or after work hours or during a lunch period, are not compensable as they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself that are shared by all travelers.<sup>8</sup> But, if the employee is on the premises of the employing establishment, an injury will generally fall within the performance of duty.<sup>9</sup>

The term "premises," as it is used in workers' compensation law, is not synonymous with property owned by the employer.<sup>10</sup> The former does not depend on ownership, nor is it necessarily coextensive with the latter. Moreover, in some cases premises may include all the property owned by the employer; in other cases, even though the employer does not have ownership or control of the place where the injury occurred, the place is nevertheless considered part of the premises. The premises of the employer may, therefore, be broader or narrower than

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>7</sup> *D.L.*, 58 ECAB 667 (2007).

<sup>8</sup> See *Denise A. Curray*, 51 ECAB 158 (1999).

<sup>9</sup> See *Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

<sup>10</sup> *Jimmie Brooks*, 54 ECAB 248, 249 (2002).

the property of the employer, depending more on the relationship of the property to the employment than on the status or extent of legal title.<sup>11</sup>

An exception to the premises rule is the principle that course of employment should include an injury that occurred at a point where the employee was within the range of dangers associated with the employment.<sup>12</sup> This is called the proximity rule and may cover an injury which occurs off the employer's premises but which occurred on the only route or at least on the normal route, which employees must traverse to reach the plant. The special hazards of that route become the hazards of the employment.<sup>13</sup> Another such extension of the premises rule occurs when an employee must travel a public thoroughfare to traverse between two premises of the employer.

OWCP is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on OWCP to see that its administrative processes are impartially and fairly conducted.<sup>14</sup> While a claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the claim.<sup>15</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant stated that she tripped and fell at 6:55 p.m. on December 19, 2009 after exiting through doors on the lower level of the airport terminal located between baggage carousels number five and six, about 10 minutes after she signed out from work and end of her shift. She was stopped by a passenger and asked a question concerning an air carrier. Appellant did not see another passenger's roller bag and tripped, sustaining a fracture of her right shoulder. OWCP denied her claim on the grounds that her injury occurred off premises after she signed out from work and while on her way home.

The Board notes that OWCP did not adequately develop the evidence to support this finding. Appellant works as a transportation security officer at an international airport. In this case, it is not clear from the record where the federal premises began or where it ends. Before OWCP can support a finding that appellant was off premises, it must first establish the parameters of the premises. The mere fact that appellant's injury occurred in an area of the airport that is not federally owned or operated or maintained by her employer is not dispositive. The employer's premises may well extend beyond the immediate ground upon which appellant performs her screening duties inside the airport.

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<sup>11</sup> *Linda D. Williams*, 52 ECAB 300 (2001). See also *Wilmer Lewis Prescott*, 22 ECAB 318 (1971).

<sup>12</sup> *Id.*; *Michael K. Gallagher*, 48 ECAB 610 (1997).

<sup>13</sup> *Id.*

<sup>14</sup> *Thomas M. Lee*, 10 ECAB 175 (1958).

<sup>15</sup> See *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

This case is similar to *Donald R. Gervasi*,<sup>16</sup> where the employee fell following the end of his work shift on the first floor of the airport terminal while entering elevator doors.<sup>17</sup> The Board noted the fact that his employer did not control or own the location where the injury occurred did not resolve the question as to the extent of the premises. Similarly, in *D.T.*,<sup>18</sup> the employee fell on pavement while walking from Terminal B on his lunch break back to Terminal A where his duty station was located. The Board found that the factual evidence of record was not sufficiently developed by OWCP to permit a fully informed adjudication of the premises issue. It stated:

“The mere fact that [the employee’s] injury occurred in an area of the airport that is not federally owned or operated or maintained is not dispositive. The employer’s premises may well extend beyond the immediate ground upon which [the employee] performs his screening duties inside Terminal A East. The premises could extend to bathrooms and restaurants and other public areas of the airport that are not owned or operated or maintained by the [F]ederal [G]overnment. The premises could extend to any place on the airport grounds where [he] might reasonably be expected to be in connection with his employment....”<sup>19</sup>

In this case, the premises of the employer could extend to the sidewalk outside the airport terminal and other public areas that are not owned or operated or maintained by the Federal Government where appellant might reasonably be expected to be in connection with her employment and this may depend on whether the employing establishment instructed her to assist passengers only at certain designated locations inside the airport or whether she was expected to assist passengers outside the airport terminals or building. There is no detailed description pertaining to the location of appellant’s duty station, the location of her injury and the routes of ingress or egress from the airport terminal. Appellant’s injury may also be compensable if the employer provided a shuttle bus as the means for appellant to get to her car and if the parking lot where her car was located was used exclusively or principally by employees for the employer’s convenience. The record on appeal does not allow the Board to make a fully informed adjudication of this claim.

Appellant contended that, as a member of the customer service team, she received training by her employer as to uniformed officers assisting the public throughout the airport. In support of her contention, Mr. Headrick and Mr. Nichols stated that all officers were expected to assist the public in any manner, including answering questions, at all times throughout the airport. Although Mr. Irwin stated that Mr. Headrick did not have the authority to change or

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<sup>16</sup> 57 ECAB 281 (2005).

<sup>17</sup> The fact that appellant sustained injury 10 minutes after she signed out is not dispositive of her claim. An employee going to or coming from work is covered under workers’ compensation while on the premises of the employer, so long as the interval before or after work is reasonable and the employee is engaged in incidental acts. See *Narbik A. Karamian*, 40 ECAB 617 (1989). Compare *Cemeish E. Williams*, 57 ECAB 509 (2006) (The employee arrived 15 minutes before her work shift at the airport and was injured on an escalator while adjusting her uniform. The Board found OWCP did not meet its burden of proof to rescind acceptance of the claim).

<sup>18</sup> Docket No. 07-985 (issued October 22, 2008).

<sup>19</sup> *Id.*

modify the policy that off-duty employees were not covered by FECA, the record does not contain a copy of the employer's policy regarding this matter. Based on the statements of appellant, Mr. Headrick, Mr. Nichols and even Mr. Irwin, the record is unclear as to whether appellant was given additional work duties by her managers or whether it is customary for off-duty employees in uniform to continue to serve the public. This aspect of the claim was not fully developed by OWCP.

For these reasons, the Board will set aside OWCP's decisions denying appellant's claim of injury and remand the case for further development of the evidence. After such development as it deems necessary; OWCP shall issue an appropriate decision on her claim for compensation.

**CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether appellant was injured on December 19, 2009 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 19 and February 5, 2010 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.

Issued: August 23, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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