United States Department of Labor
Employees' Compensation Appeals Board

C.K., Appellant	)	
and	)	**Docket No. 11-905**
	)	**Issued: October 19, 2011**
DEPARTMENT OF VETERANS AFFAIRS, ILLIANA HEALTH CARE SYSTEM, Mattoon, IL, Employer	)	

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 February 22, 2011 appellant filed a timely appeal from a February 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's injury of March 2, 2010 was sustained while in the performance of duty.

FACTUAL HISTORY

On March 2, 2010 appellant, then a 48-year-old nurse, filed a traumatic injury claim alleging that, at 7:30 a.m. that day, he slipped and fell on ice while exiting his jeep in the parking

[1] 5 U.S.C. § 8101 *et seq.*

lot of the Illiana Health Care System. He sustained back and neck pain, a headache, and abrasions to his left elbow and right fourth finger. Appellant's regular tour of duty was 7:45 a.m. to 4:15 p.m. Monday through Friday. He submitted physical therapy records, x-ray reports and magnetic resonance imaging (MRI) scan reports. The employing establishment authorized continuation of pay (COP) effective March 3, 2010 pending OWCP's decision.[2]

On December 29, 2010 OWCP requested additional information from the employing establishment about the location of the alleged injury. It asked whether the parking facility was owned, maintained, or controlled by the employer; whether the lot in which appellant parked his vehicle was available to the general public; whether other parking was available to employees; whether parking was provided without cost to the agency's employees; whether the parking facility was contracted for the exclusive use of its employees; whether parking spaces were assigned by the employing establishment to its employees; and whether the parking facility was monitored to see that no unauthorized cars were parked in that lot. OWCP also requested that appellant provide additional details to substantiate the factual element of his claim and a physician's report with a diagnosis and opinion as to the cause of any diagnosed conditions.

On January 20, 2011 Tisha Harvey, an employee relations specialist, responded to OWCP's request. She stated that the parking facility where the alleged injury occurred was not owned, controlled, or managed by the employing establishment, but was leased from Gardner, Whitworth, and Associates, a private company. The employing establishment did not contract for the exclusive use of the parking lot for its employees, assign parking spaces to employees, charge employees for using the lot, or check to see that unauthorized vehicles did not park in the lot. Instead, the parking facility was shared by other retail establishments and the public was also permitted to use the lot. Ms. Harvey explained that the lot was spacious with more than 100 spots available and that the approximate distance between where the accident occurred and where appellant's duties were performed was approximately 60 feet.

By decision dated February 10, 2011, OWCP denied appellant's claim finding that his March 2, 2010 injury did not occur in the performance of duty. It determined that, because the employing establishment did not own, lease, or manage the parking garage where the alleged injury occurred, his injury was sustained off-premises and did not arise during the course of his employment.

LEGAL PRECEDENT

Under FECA, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during lunch period, are not compensable as they do not arise out of or in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[3] This is in

[2] On November 24, 2010 appellant filed a recurrence claim alleging that on November 6, 2010 he sustained a recurrence of the alleged March 4, 2010 injury. On December 29, 2010 OWCP advised her that it was unable to make a determination regarding his recurrence claim because his initial claim had not been fully processed, specifically whether he sustained a work-related injury on March 2, 2010.

[3] *Randi H. Goldin*, 47 ECAB 708 (1996); *Conrad F. Vogel*, 47 ECAB 358 (1996).

accord with the weight of authority under workers' compensation statutes that such injuries do not occur in the course of employment.[4] 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 his master's business, at a place where 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.[5]

However, exceptions to this rule have been declared by courts and workers' compensation agencies. One such exception is the premises rule, which stipulates that an employee driving to or coming from work is covered under workers' compensation while on the premises of the employer. The Board has found that the term "'premises' as 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."[6]

The Board has pointed out that factors which determine whether a parking area used by employees may be considered a part of the employing establishment's premises include whether the employer contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employer 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 employer. 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.[7]

ANALYSIS

On March 2, 2010 appellant slipped and fell on ice when exiting from his vehicle in a parking lot located near the employing establishment. He sustained injuries to his neck, back, and left elbow. The record establishes that appellant had fixed hours and place of work and that his injury occurred while going to work that morning. Under the going and coming rule, appellant's slip and fall did not arise out of or in the course of employment and is not considered to be sustained in the performance of duty unless he establishes that the incident occurred on the

[4] *William L. McKenney,* 31 ECAB 861 (1980).

[5] *Roma A. Mortenson-Kindschi,* 57 ECAB 418 (2000); *T.F.,* Docket No. 08-1256 (issued November 12, 2008).

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

[7] *Diane Bensmiller,* 48 ECAB 675 (1997); *Rosa M. Thomas-Hunter,* 42 ECAB 500 (1991); *Edythe Erdman,* 36 ECAB 597 (1985); *Karen A. Patton,* 33 ECAB 487 (1982).

actual or constructive premises of the employing establishment.[8] The Board finds that appellant was not in the performance of duty at the time of his slip and fall on March 2, 2010.

The location where appellant slipped and fell was approximately 60 feet from the employing establishment's building before his tour of duty began. On appeal, he explained that he arrived at 7:30 a.m. to allow himself enough time to start his tour of duty at 7:45 a.m. and noted that his injury occurred in the parking lot of the Veterans Affairs Mattoon Community Based Outpatient Clinic (CBOC). Under the circumstances of this case, however, the Board finds that the parking lot was not part of the actual premises of the employing establishment. Rather it was being leased from a private company and was not owned controlled, or managed by the employing establishment.[9]

The record establishes that the parking facility is not part of the constructive premises of the employing establishment. The Board has held that, under special circumstances, the employment premises may be constructively extended to hazardous conditions which are proximately located to the premises and therefore may be considered as hazards of the employing establishment.[10] As noted, the employing establishment was not responsible for maintaining the parking facility, did not check to see if any unauthorized cars were parked in the lot, did not assign any parking spaces to its employees, and did not exclusively contract the parking lot for its employees. The parking facility was shared by other retail establishments, was free of charge to the employees, and open to the public. Under these circumstances, the Board finds that the parking lot was not so connected with the employer as to be construed as part of the employer's premises. Thus, the employer's premises should not be constructively extended to include the parking lot in this case.[11]

Appellant's March 2, 2010 slip and fall thus constitutes an off-premises injury that occurred while appellant was going to work, which is not compensable as it did not arise out of and in the course of employment, but out of ordinary nonemployment hazards of the journey itself which are shared by all travelers.[12]

CONCLUSION

The Board finds that appellant failed to establish that his March 2, 2010 injury was sustained while in the performance of duty.

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

[9] *See Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991).

[10] *See Randi H. Goldin*, *supra* note 3 at 711.

[11] *See M.P.*, Docket No. 10-54 (issued July 27, 2010).

[12] *Rosa M. Thomas-Hunter*, *supra* note 9; *Jacqueline Nunnally-Dunord*, 36 ECAB 217 (1984).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 19, 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