United States Department of Labor
Employees' Compensation Appeals Board

V.P., Appellant	)	
and	)	**Docket No. 13-714**
	)	**Issued: July 1, 2013**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2013 appellant filed a timely appeal of a September 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met her burden of proof to establish that she sustained an injury in the performance of duty on January 19, 2011.

On appeal, appellant contends that she sustained an injury in the performance of duty as she walked through 600 Maryland Avenue, S.W., Washington, DC in order to catch the shuttle service operated by the employing establishment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 30, 2012 appellant, then a 52-year-old benefits adviser, filed a traumatic injury claim alleging that on January 19, 2011 she slipped in water on the floor and fractured her left hip, shoulder, leg, knee, wrist and foot. On August 8, 2012 OWCP controverted her claim, contending that the injury did not occur in the performance of duty but at an off-premises location while she was commuting to work. The employing establishment noted that appellant slipped and fell on January 19, 2011 at 600 Maryland Avenue, S.W., Washington D.C., while going to catch a shuttle bus that morning to her office.[2]

On September 11, 2012 appellant responded to questions from OWCP. She stated that her typical commute involved taking a commuter bus that dropped her off at 600 Maryland Avenue, S.W. at approximately 6:19 a.m. Upon getting off the bus, appellant's route required her to go through the L'Enfant Plaza building and shops to catch an employing establishment shuttle at 500 C Street, S.W. at 6:30 a.m. As she began walking through the entrance of the L'Enfant Plaza building she fell on her left side. Appellant noted that there was water on the floor where she fell.

By decision dated September 24, 2012, OWCP denied appellant's claim finding that the evidence did not establish that she was in the performance of duty at the time of the January 19, 2011 accident. It found that she was off premises at the time of the injury.

LEGAL PRECEDENT

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase sustained while in the performance of duty in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment.[4]

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 the master's business, at a place where he may reasonably be expected to be in connection with the employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[5] In deciding whether an injury is covered by FECA,[6] the test is whether, under all the circumstances,

[2] Appellant's regular work hours were reported as 6:30 a.m. to 4:00 p.m., Monday through Friday.

[3] 5 U.S.C. § 8102(a).

[4] *See Valerie C. Boward*, 50 ECAB 126 (1998).

[5] *See R.A.*, 59 ECAB 581 (2008); *Mary Keszler*, 38 ECAB 735 (1987).

[6] 5 U.S.C. §§ 8101-8193.

a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.[7]

The Board has recognized as a general rule that off-premises injuries sustained by employees having fixed hours and places of work while going to or coming from work or during a lunch period, are not compensable, as they do not arise out of and in the course of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers, subject to certain exceptions.[8] 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.[9] 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.[10] 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.[11] The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.[12]

ANALYSIS

Appellant alleged that she slipped in water on the floor and fell at the L'Enfant Plaza building at 600 Maryland Avenue, S.W. while walking from her commuter bus to the location of the employing establishment's shuttle.

With regards to the time element, based on appellant's statement, the incident occurred at approximately 6:30 a.m. while she was commuting to work. She was still on her way to the employing establishment and had not yet begun her work. The Board has held that the mere fact that an injury occurs during the workday is not sufficient, in and of itself, to bring an injury within the performance of duty. For compensability, the concomitant requirement of an injury, arising out of employment, must also be shown.[13]

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

[8] *See M.L.*, Docket No. 12-286 (issued June 4, 2012); *John M. Byrd*, 53 ECAB 684 (2002); *see also Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

[9] *See R.O.*, Docket No. 08-2088 (issued February 18, 2011).

[10] *See Shirley Borgos*, 31 ECAB 222, 223 (1979).

[11] *See supra* note 7.

[12] *Id.; see also Jimmie Brooks*, 22 ECAB 318, 321 (1971).

[13] *See William W. Knispel*, 56 ECAB 639 (2005); *Luis A. Velez*, 56 ECAB 592 (2005).

In *Idalaine L. Hollins-Williamson*,[14] the employee fell and injured her left side while walking from a parking lot to the employing establishment building on a snow-covered public sidewalk. The Board found that the employee did not establish that the sidewalk on which she fell was used exclusively or principally by employees of the employing establishment for the convenience of the employing establishment. The evidence of record supported that the sidewalk where the incident occurred was not owned, operated or maintained by the employing establishment and was open to the public. The employee's injury was found not to be in the performance of duty. In *M.L.*, the employee fell while walking across the street from a train station to work. The Board found that the employee fell while commuting to work on a public sidewalk, and was not in the performance of duty.[15]

Even if a public area were the customary means of access to the employing establishment or to a transportation point for its employees, this did not alter the public nature of the area or render it a part of the employing establishment's premises.[16] In this case there is no evidence that the area where appellant fell was restricted to the employees of the employing establishment or that it owned, operated or maintained the area where the incident occurred. The area was open to the general public. The evidence does not establish that appellant was engaged on any special errand when she left her home to commute to her place of employment and there is no evidence which would establish that her journey to work that day was an integral part of any errand or special task either expressly or impliedly agreed to by the employing establishment. Rather, as stated by appellant, travel on that date conformed to her regular work schedule and her normal morning commute in going to the office. The Board finds that she was not in the performance of duty on January 19, 2011 as the injury occurred while she was exposed to an ordinary, off-premises nonemployment hazard of the journey shared by all travelers.[17]

While appellant's employment gave rise to her journey between home and the employing establishment, workers' compensation was not intended to protect her from all the perils of such journey.[18] The Board finds that the established exceptions mentioned above do not apply to her case. Appellant was not reasonably fulfilling the duties of her employment or doing something incidental to the fulfillment of her job duties. She had not yet begun her tour of duty and was walking in a public area towards the employing establishment's shuttle pick-up point. As noted, an employee going to work who have been injured off-premises is not in the course of employment.[19] As appellant was not in the course of employment at the time of the January 19, 2011 incident, she has failed to meet her burden of proof.

[14] 55 ECAB 655 (2004).

[15] Docket No. 12-286 (issued June 4, 2012).

[16] *See supra* note 8.

[17] *See supra* note 7.

[18] *See Asia Lynn Doster*, 50 ECAB 351 (1999).

[19] *See C.P.*, Docket No. 11-1432 (issued January 23, 2012).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on January 19, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 24, 2012 is affirmed.

Issued: July 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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