BRB No. 96-0825

RHONDA McDUFFIE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY & AIR FORCE EXCHANGE SERVICE	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

John J. Osterhage, Crestview Hills, Kentucky, for claimant.

Matthew R. Lavery (HQ Army and Air Force Exchange Service), Dallas, Texas, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-1895) of Administrative Law Judge Richard E. Huddleston rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

While employed as a customer service representative with employer at its Wright-Patterson Air Force Base Exchange in Ohio, claimant sustained an injury to her back and left knee when she slipped and fell on ice and snow in the primary employee parking lot on her way to work on January 7, 1994. Claimant missed six weeks of work following the accident, returned to limited duty on February 22, 1994, and worked light duty through March 25, 1994. Claimant was released to full duty on March 26, 1994, but was subsequently restricted to limited duty from June 28, 1995, through July 12, 1995, due to knee surgery. Claimant missed work from July 13, 1995, through July 31, 1995, but then was released to full duty on August 1, 1995. Claimant is currently employed with

employer as a lead sales associate. Emp. Ex. 2 at 4.

The administrative law judge denied benefits after finding that claimant's injury did not occur in the course and scope of her employment. The administrative law judge recognized the general rule that injuries sustained by employees going to or coming from work are not compensable and further determined that none of the four exceptions to the "coming and going" rule applies in this case. The administrative law judge also found that the "zone of special danger" doctrine is inapplicable as it is limited to claims filed under the Defense Base Act and the District of Columbia Workmen's Compensation Act.

On appeal, claimant challenges the administrative law judge's denial of benefits, contending that she was injured in the course of her employment within the meaning of the Act. Employer responds in support of the administrative law judge's denial of benefits.

It is well-established that for an injury to be considered to arise in the course of employment, it must have occurred within the time and space boundaries of the employment and in the course of an activity whose purpose is related to the employment pursuant to Section 2(2) of the Act, 33 U.S.C. §902(2). *See, e.g., Wilson v. Washington Metropolitan Area Transit Authority*, 16 BRBS 73, 75 (1984). Generally, injuries sustained by employees on their way to or from work are not compensable, as travelling to and from work is not within the scope of the employees' employment. *See, e.g., Sawyer v. Tideland Welding Service*, 16 BRBS 344, 345 (1984). Several exceptions to the so-called "coming and going" rule have been recognized, however, in situations where "the hazards of the journey may fairly be regarded as the hazards of the service." *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469, 479 (1947).

The United States Supreme Court has recognized exceptions to the "coming and going" rule, which include situations where:

(a) the employer pays for the employee's travel expenses or furnishes the transportation;
(b) the employer controls the journey;
(c) the employee is on a special errand for the employer; or
(d) the employee is subject to emergency calls.

Cardillo, 330 U.S. at 469; *see Perkins v. Marine Terminals Corp.*, 673 F.2d 1097, 14 BRBS 771 (9th Cir. 1982).

After consideration of claimant's contentions on appeal and the administrative law judge's decision in light of the record evidence, we affirm the administrative law judge's denial of benefits. In denying benefits to claimant because her injuries did not occur in the course and scope of her employment, the administrative law judge found that claimant was not entitled to benefits for her injuries as she was going to work. *Cardillo*, 330 U.S. at 469; Decision and Order at 6-7; Jt. Ex. 1. The administrative law judge noted that it was undisputed that claimant's injury occurred before she had clocked in or reported to work and that the parties stipulated that claimant was not on duty at the time of the injury and that the parking lot is not part of the Exchange's premises. Decision and Order at 6; Jt. Ex. 1. The administrative law judge further determined that none of the exceptions to the "coming and going" rule applies as the parties stipulated that claimant was not on a special errand

for employer and that employer did not pay her transportation to or from work. *See Cantrell v. Base Restaurant, Wright-Patterson Air Force Base*, 22 BRBS 372 (1989); Decision and Order at 6; Jt. Ex. 1. The administrative law judge further noted that claimant made no argument that she was subject to emergency calls. Decision and Order at 7. Finally, although claimant testified that in the past she had seen the custodial employees of the Base Exchange throw salt on half the length of the walkway from the parking lot to the store and some part of the parking lot, Joseph Flores, the operations manager of the Exchange, stated in his affidavit that Exchange employees did not remove snow from the primary employee parking lot where claimant was injured. He stated that this activity is the responsibility of military personnel. Emp. Ex. 2 at 9-12; Att. A to Jt. Ex. 1. As the parties stipulated that Mr. Flores' affidavit is a true and accurate statement concerning ownership and maintenance of the parking lot where claimant was injured, the administrative law judge properly found that the "control" exception to the "coming and going" rule is inapplicable in the instant case. *Harris v. England Air Force Base Nonappropriated Fund Financial Management Branch*, 23 BRBS 175 (1990); *Cantrell*, 22 BRBS at 372; Decision and Order at 3, 7; Jt. Ex. 1.

Lastly, the administrative law judge properly did not apply the "zone of special danger" doctrine to this case which does not arise under the Defense Base Act or the District of Columbia Workmen's Compensation Act. *Id.*; *Cantrell*, 22 BRBS at 372; *McNamara v. Mac's Pipe & Drum, Inc.*, 21 BRBS 111 (1988); Decision and Order at 7.[1]

[1]Claimant asserts that since the "zone of special danger" doctrine is applied in cases under the District of Columbia Workmen's Compensation Act, workers in other parts of the United States are also entitled to its application. However, the Board applies this test in D.C. Act cases because it is bound by the decisions of the United States Court of Appeals for the District of Columbia Circuit, and that court has held it applicable. *Durrah v. Washington Metropolitan Area Transit Authority*, 760 F.2d 322, 17 BRBS 95 (CRT)(D.C. Cir. 1985); *see Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988)("zone of special danger" doctrine applied to claimant employed in D.C. who was injured in Peru).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge