U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN BEIGELMAN and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA

Docket No. 99-522; Submitted on the Record;
Issued May 15, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on December 15, 1997.

On December 10, 1997 appellant, then a 53-year-old revenue officer, filed a claim for a traumatic injury, Form CA-1, alleging that at 10:00 a.m. on December 15, 1997 she slipped on an icy patch by the entrance of the employing establishment's building and broke her ankle in two places. Appellant's supervisor, William M. Greenberg, stated that appellant was on leave the morning of December 15, 1997 and was coming into work late when the accident occurred. Further, he stated that the parking lot was not federally owned or maintained.

By letter dated January 17, 1998, the Office of Workers' Compensation Programs requested additional information from appellant including medical evidence on causation. Appellant submitted medical evidence and a statement dated February 2, 1998 in which, she stated that she slipped on the ice while on a work assignment.

By decision dated April 10, 1998, the Office denied the claim, stating that appellant did not establish that she sustained an injury in the performance of duty.

By letter dated July 28, 1998, appellant requested reconsideration of the Office's decision and submitted additional evidence including statements from herself and Mr. Greenberg dated June 29, 1998. In his June 29, 1998 statement, Mr. Greenberg stated that, based on appellant's time sheet for the two-week pay period, including December 15, 1997, appellant was in work status and had gone directly to the field for investigative purposes and was returning to her office when the fall on the ice occurred. He stated that appellant was then given administrative leave for her injury in order to go to the hospital. Mr. Greenberg further stated that the case history notation regarding the field visitation to a taxpayer conducted that morning by appellant verified that appellant was in work status on the morning of December 15, 1997.

In her statement dated June 29, 1998, appellant stated that when she fell she was in the field on assignment and that her work involved field investigations.

In a memorandum of a telephone conference with Mr. Greenberg dated August 5, 1998, the Office stated that the parking lot in which appellant fell was maintained by the landlord to whom the employing establishment paid rent for lease of the building it uses. The parking lot was open to the public, there were no assigned spaces, no cost to the employees, no sticker was required to park there and no one checked who parked there as there was no gate and no guard. Offices not part of the employing establishment who worked in the same building as the employing establishment could also use the lot.

By decision dated September 2, 1998, the Office denied appellant's request for modification.

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

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 are not compensable as they do not arise out of and in the course of employment.[1] The Board has also pointed out that factors, which, determine whether a parking lot used by employees may be considered a part of the employing establishment's "premises" include whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment 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.[2] Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the "premises" of the employing establishment.[3] 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.[4]

In the present case, the evidence establishes that the parking lot in which appellant sustained her December 15, 1997 injury was not part of the employing establishment's premises because the employing establishment did not contract for the exclusive use by its employees of the parking area, there were no assigned parking spaces and the parking lot was open to the public at no cost. Nonetheless, appellant's statement and the statement appellant submitted from her supervisor, Mr. Greenberg, dated June 29, 1998, establish that when she was injured on December 15, 1997 she was in work status as she was returning from performing an investigation for the employing establishment, which was a regular part of her work duties. The

[1] *Melvin Silver*, 45 ECAB 677, 682 (1994).

[2] *Rosa M. Thomas-Hunter*, 42 ECAB 500, 504-05 (1985); *Edythe Erdman*, 36 ECAB 597, 599 (1985).

[3] *Id.*

[4] *Id.*

operative principle used to determine whether the off premise injury is within the course of employment (*i.e.*, performance of duty) is whether the employer, in all the circumstances including duration, shortness of off premises distance and limitations on off-premises activity during the interval, can be deemed to have retained authority over the employee.[5] Since appellant was returning from performing an investigation on behalf of the employing establishment when she slipped on the ice in the parking lot, even though it was an off premises injury, appellant was in the care of her employment. Appellant's injury of slipping and falling on the ice on December 15, 1997 is, therefore, covered under the Federal Employees' Compensation Act.

The decisions of the Office of Workers' Compensation Programs dated September 2 and April 10, 1998 are, therefore, reversed and the case remanded for the Office to determine appellant's entitlement to disability compensation.

Dated, Washington, D.C.
May 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[5] *Lola M. Thomas*, 37 ECAB 572, 573 (1986).