The issue is whether appellant sustained injury while in the performance of duty.

On October 27, 1999 appellant, then a 67-year-old secretary, was walking to the employing establishment when she tripped on an uneven sidewalk slab and fell, sustaining fractures of both patellae, an injury to her arm and contusions of the face. In a December 8, 1999 decision, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that she was not injured in the performance of duty. Appellant requested a hearing before an Office hearing representative, which was conducted on July 10, 2000. In a September 7, 2000 decision, the Office hearing representative found that appellant was not injured in the performance of duty because she was not injured on the premises of the employing establishment.

The Board finds that appellant was not injured while in the performance of duty.

The Federal Employees’ Compensation Act 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.” In deciding whether an injury is covered by the Act, the test is whether there exists between the employment itself or the conditions under which it is required to be performed and the resultant injury. The Board has stated as a general rule that off premises injuries sustained by employees having fixed hours and place 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 but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all employees.

3 Conrad F. Vogel, 47 ECAB 358 (1996).
travelers. This rule also applies where an employee is coming to his or her permanent duty
station before work or leaving the permanent duty station after work and is injured in an area
adjacent to the employing establishment where he or she worked, but which is not owned or
controlled by the federal government.

In defining what constitutes the premises of an employing establishment, the Board has
said:

“The ‘premises’ of the employer, as the term is used in workmen’s compensation
law, are not necessarily coterminous with the property owned by the employer;
they may be broader or narrower and are dependent more on the relationship of
the property to the employment than on the status or extent of the legal title.”

The evidence of record shows that appellant has fixed hours of work and was walking to
the employing establishment when she fell. Her status, therefore, was that of a “fixed premises”
employee who, is subject to the “going and coming” rule generally applicable to such employees.
The employing establishment was located in three floors of a building that were leased from a
private owner. Appellant acknowledged that the building was not owned or operated by the
federal government. She noted that, after her injury, the sidewalk was repaired by the owner of
the building, not the federal government. At the time of the injury, appellant had not begun her
scheduled workday and was not on the premises of the employing establishment. Therefore, it
cannot be found that the injury occurred on the premises of the employing establishment.

Under the facts of this case, it also cannot be said that appellant’s injury occurred on the
constructive premises of the employing establishment. The Board has determined that under
certain 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. The main consideration in applying this rule is whether
the conditions giving rise to the injury are causally connected to the employment. In this case,
appellant has not shown that the sidewalk was used exclusively or principally by employees of
the employing establishment for the convenience of the employer. The employing
establishment did not own the sidewalk and was not responsible for the maintenance of the
sidewalk. Thus appellant’s injury is considered to be an ordinary, nonemployment hazard of the
journey to work itself, shared by all travelers. The case record does not establish that the
sidewalk used by appellant was so connected with the employing establishment as to be
considered part of the premises of the employing establishment. Therefore, appellant has not
established that she sustained an injury in the performance of duty.

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6 See Conrad F. Vogel, supra note 3.
7 William L. McKenny, 31 ECAB 861 (1980).
8 Mary Keszler, 38 ECAB 735 (1987).
9 Shirley Borgos, 31 ECAB 222 (1979).
The decisions of the Office of Workers’ Compensation Programs, dated September 7, 2000 and December 8, 1999, are hereby affirmed.

Dated, Washington, DC
July 17, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member