

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDICE G. HOLT and DEPARTMENT OF JUSTICE, U.S. ATTORNEY'S
OFFICE, WESTERN DISTRICT OF TENNESSEE, Memphis, TN

*Docket No. 00-584; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 14, 1999 request for reconsideration.

On February 19, 1997 appellant, then a 41-year-old legal secretary, filed a notice of traumatic injury alleging that she sustained a trimalleolar fracture of the left ankle, requiring open reduction and fixation,¹ when she slipped and fell on the sidewalk in front of the Clifford Davis Federal Building, on Wednesday, January 15, 1997.² In accompanying statements, appellant noted that she took a municipal bus to work on January 15, 1997. (Her tour of duty began at 8:30 a.m. Monday through Friday, ending at 5:00 p.m.) Appellant recalled that, "after the bus stopped, I proceeded to walk down the steps of the bus onto the sidewalk. [I] stepped off the last step with my right foot, but somehow [I] lost [my] footing and spun around, landing on [my] ankle and not able to get back up." Appellant surmised that she "slipped on a patch of ice in front of the bus stop. She stated that the bus stop was "three to four feet, if that much, from the curb which is only a few inches from the street. The actual [bus stop] sign is only six to twelve inches from the street.

In a May 16, 1997 letter, Madison P. Fulghum, an official employed by the General Services Administration, noted that, according to the building site plan, the accident occurred on City of Memphis property. The site plan of the location of appellant's fall indicated that the property line of the federal building, a margin of 9 feet 5½ inches beyond the walls of the building, ended at a concrete sidewalk which is 16 feet and 6 inches wide and that the concrete

¹ In a June 26, 1997 report, Dr. James H. Beaty, an attending orthopedic surgeon, stated that appellant "slipped and twisted her ankle from the history obtained on January 15, 1997," causing a "trimalleolar fracture dislocation of the ankle" requiring surgery.

² Appellant fractured her left ankle in three places and fractured the left fibula.

curb, of an unspecified width, was on the opposite side of that sidewalk, directly adjoining Front Street.

In a May 29, 1997 letter, the employing establishment stated that, at the time of injury, appellant was “en route to her work site” and “was not on property which is owned, operated or controlled by this agency.”

By decision dated August 25, 1997, the Office denied appellant’s claim on the grounds that the January 15, 1997 ankle injury did not occur in the performance of duty.

Appellant disagreed with this decision and in a February 24, 1998 letter requested reconsideration through her attorney representative.

Appellant asserted that the employing establishment was obligated by the Memphis Code to “build, repair or clean” a sidewalk “abutting on or adjacent” to the owner’s property and that, therefore, the sidewalk was under the employing establishment’s control and, therefore, the premises of the employing establishment. She also asserted that the fall was caused by an accumulation of ice on the sidewalk that the employing establishment was required to have removed according to the Memphis City code.

Appellant also submitted photographs of the exterior of the federal building and the sidewalk in question, showing the bus stop located on the sidewalk outside an entrance to the building.

By decision dated June 12, 1998, the Office denied modification of the prior decision regarding the performance of duty issue. The Office found that appellant “had not yet started work” as of 8:30 a.m. on January 15, 1997, that she was “not performing the duties of [her] employment at the time of the injury” and that the injury occurred at a bus stop not on the employing establishment’s premises.

Appellant disagreed with this decision and in a June 14, 1999 letter requested reconsideration through her attorney. Appellant asserted that the Office erred in its June 12, 1998 decision, by finding that she was injured at a bus stop, whereas she fell on the sidewalk and not in the bus stop shelter. Appellant further alleged that the Office wrongly found that she asserted that she fell due to the sidewalk being in disrepair, whereas she attributed her injury to ice on the sidewalk, that the property owner had a municipal obligation to remove. She again asserted that she stepped onto the sidewalk when exiting the bus on January 15, 1997 and that the sidewalk was “on federal property.”

By decision dated July 28, 1999, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted in support was of a repetitious nature.

The Board finds that the Office properly denied appellant’s June 14, 1999 request for reconsideration.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As

appellant filed her appeal with the Board on October 25, 1999, the Board has jurisdiction only over the July 28, 1999 decision.³

Under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁵ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, set forth arguments and contain evidence which:

“(i) Shows that [Office] erroneously applied or interpreted a point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”⁶

Section 10.608(b) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁷

In support of her June 14, 1999 request for reconsideration, appellant submitted a June 14, 1999 letter reiterating her previous contentions that she fell on the sidewalk and that the sidewalk was under the employing establishment's control. Appellant asserts that the Office erred by stating that she fell at a bus stop instead of on the sidewalk and that she did not allege that the sidewalk was in disrepair as the Office found. The Board finds that these arguments have previously been considered by the Office and are repetitious in nature. Therefore, the June 14, 1999 letter does not constitute relevant and pertinent legal argument not considered by the Office.

Appellant's June 14, 1999 letter does not show that the Office erroneously applied or interpreted a point of law, or advance a point of law not previously considered by the Office. The Board finds that the Office properly exercised its discretion in conducting a limited review of the evidence submitted and properly denied appellant's June 14, 1999 request for reconsideration.

³ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b) (1999).

⁶ 20 C.F.R. § 10.138(b)(1).

⁷ 20 C.F.R. § 10.608(b).

The decision of the Office of Workers' Compensation Programs dated July 28, 1999 is hereby affirmed.

Dated, Washington, DC
June 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member