

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA D. WILLIAMS and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Atlanta, GA

*Docket No. 99-443; Submitted on the Record;  
Issued March 9, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury while in the performance of duty on November 3, 1997.

On November 3, 1997 appellant, then a 45-year-old tax examiner, claimed injury to her back and left leg when she fell while walking on a brick ramp at 7:30 a.m. She noted: "I was entering the Federal Center Building from [the] MARTA station, coming down the entrance ramp." On the reverse of the claim form, Eva Reed, appellant's supervisor, noted that appellant's tour of duty was 8:00 a.m. to 4:00 p.m. and that she was coming into work. The claim was controverted on the basis that appellant was not on government property. Appellant submitted a diagram, indicating that she had exited from the MARTA tunnel through a garage door entry, passed a security guard station where employee identification was checked and then fell while on a brick walkway leading to the double door entrance of the Atlanta Federal Center.

By letter dated December 15, 1997, the Office of Workers' Compensation Programs requested that appellant and the employing establishment submit additional evidence in regard to her claim. The Office noted that it was unclear whether appellant was injured while on federal property and requested information as to whether nonfederal employees were allowed to walk past the security guard and whether the government maintained control over the property.

Appellant submitted medical reports related to her treatment by Dr. William C. McGarity, Jr., an internist, and physical therapy management notes for back pain.

On December 16, 1997 the Office received a report from Ken Nisewonger, safety officer for the Georgia Support Site, Facilities Management Branch. Mr. Nisewonger stated that he spoke with a General Services Administration (GSA) specialist, who determined "that the brick walkway in question is owned by the city of Atlanta."

In a February 3, 1998 decision, the Office found that appellant was not entitled to compensation benefits on the grounds that fact of injury was not established.

On February 20, 1998 appellant requested an oral hearing before an Office hearing representative. Following preliminary review of the record, on May 28, 1998 the hearing representative set aside the February 3, 1998 decision and remanded the case for further development on the issue of whether appellant was on the premises when injured.

By letter dated June 28, 1998, the Office again requested information as to whether nonfederal employees were allowed to walk past the security guard station, located at the garage door leading out from the MARTA tunnel. Further, the Office inquired as to who had responsibility for the maintenance of the walkway, the hours of operation and any agreement between the city of Atlanta and the federal government with regard to the walkway.

In a July 8, 1998 response, appellant indicated that at the time of the November 3, 1997 incident the walkway floor was wet and slippery. She provided the name of the security guard on duty who witnessed her fall.

In an August 3, 1998 memorandum, Rita Moore, Chief of the Customer Service Division at the employing establishment, stated that she contacted the GSA Building Manager at the Atlanta Federal Center and was advised that identification badges were required of all persons passing the guard entering into the tunnel walkway approaching the Atlanta Federal Center from the MARTA railway. Ms. Moore was also advised that GSA had control over and maintained the property even though MARTA owned it.

In an August 21, 1998 decision, the Office denied appellant's claim finding that the November 3, 1997 fall was not sustained while in the performance of duty. The Office found that the sidewalk in question was not for the exclusive use of federal employees entering a government owned building and therefore did not constitute federal property.

The Board finds that appellant was injured while on the premises of the employing establishment.

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, 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 travelers.<sup>1</sup> However, if the employee is on the premises of the employing establishment, an injury will generally fall within the performance of duty.<sup>2</sup> The course of employment for employees having

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<sup>1</sup> See *Charles J. Chiodo*, 49 ECAB 525 (1998); *Samuel Curiale*, 48 ECAB 468 (1997). While employment is the cause of an employee's journey between home and work, it is generally taken for granted that workers' compensation is not intended to protect against all perils of that journey.

<sup>2</sup> See *Patrick Dunn*, 48 ECAB 563 (1997).

a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts.<sup>3</sup>

The term “premises,” as it is generally used in workers’ compensation law, is not synonymous with “property.” The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases the “premises” may include all the “property” owned by the employer; in other cases, even though the employer does not have ownership and control of the place where the injury occurred, the place is nevertheless considered part of the premises.<sup>4</sup> The “premises” of the employer, as that term is used in workers’ compensation law, are not necessarily coterminous with the property owned by the employer; the term may be broader or narrower depending more on the relationship of the property to the employment than on the status or extent of legal title.<sup>5</sup>

Underlying the proximity exception to the premises rule is the principle that course of employment should extend to an injury that occurred at a point where the employee was within the range of dangers associated with the employment.<sup>6</sup> 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 plant, and that the special hazards of that route become the hazards of the employment.<sup>7</sup> Factors that generally determine whether an off-premises point used by employees may be considered part of the “premises” include whether the employing establishment has contracted for exclusive use of the area and whether the area is maintained to see who may gain access to the premises.

In this case, the walkway on which appellant sustained injury was not a public sidewalk or otherwise open to unrestricted access by all travelers. Rather, the evidence of record establishes that entry to the walkway was contingent upon appropriate identification being presented at the guard station by those wishing to enter the Federal Center facility. If nonfederal individuals entered the area, the guard would scan their persons and belongings for weapons. The statement of Ms. Moore noted that the GSA building manager confirmed badges were required of all persons to pass the guard and enter the tunnel walkway approach to the Federal Center from the MARTA subway. It was further reported that, although owned by the City of Atlanta, the tunnel walkway was controlled and maintained by GSA. In this respect, the diagram submitted to the record indicates that access to the tunnel walkway could be restricted from the general public within the subway system by the closure of a garage door barrier. This evidence provides sufficient nexus for the Board to find that appellant’s injury was sustained while on the tunnel walkway that formed the normal route for federal employees traversing from the MARTA subway to the Federal Center. Further, access to the area was restricted and controlled by the federal government. Under these circumstances, the tunnel walkway may properly be

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<sup>3</sup> See *Veniece Howell*, 48 ECAB 414 (1997).

<sup>4</sup> See *Diane Bensmiller*, 48 ECAB 675 (1997).

<sup>5</sup> See *Dollie J. Braxton*, 37 ECAB 186 (1985); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

<sup>6</sup> See *Michael K. Gallagher*, 48 ECAB 610 (1997).

<sup>7</sup> *Id.*

considered as part of the premises of the employing establishment. The case will be remanded to the Office to develop the record and make a determination on any period of disability resulting from appellant's injury.

The decisions of the Office of Workers' Compensation Programs dated August 21 and February 3, 1998 are hereby set aside and the case remanded for further development consistent with this decision.

Dated, Washington, DC  
March 9, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member