U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONNIE BERKOWITZ and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA

Docket No. 01-1451; Submitted on the Record;
Issued May 1, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

On June 16, 2000 appellant, then a 45-year-old Equal Employment Opportunity (EEO) officer, filed a traumatic injury claim alleging that on June 15, 2000 at 4:52 p.m., she sustained multiple contusions and injuries to her arms, legs, right ankle, head, neck, back and severe emotional trauma, when she was attacked and pushed to the ground by an unknown assailant outside of the building where she worked.[1] She stopped work on June 16, 2000. The employing establishment noted that appellant was leaving work and was attacked approximately 20 feet outside the building when she was accosted.

Appellant submitted medical reports and a statement in support of her claim.

In an August 1, 2000 memorandum of conference, Elaine Bame of the employing establishment advised the Office of Workers' Compensation Programs that the building where appellant was employed was privately owned and the employing establishment leased space within the building. Ms. Bame advised the Office that the employing establishment did not maintain the property outside of the building and appellant was approximately 20 feet from the building exit on the sidewalk between the building where the incident occurred and the next building. She further advised that the person that accosted appellant was not a federal employee and was unknown to the claimant.

In an October 28, 2000 decision, the Office rejected appellant's claim on the grounds that she had not established that she sustained an injury while in the performance of duty.

In a November 15, 2000 letter, appellant requested a hearing before an Office hearing representative. At the March 6, 2001 hearing, her representative submitted photographs to illustrate the area in which she fell. Appellant testified that the attack occurred 5 minutes after

[1] Appellant's work tour was listed as 7:30 a.m. to 4:00 p.m., Monday through Friday.

she had left the work building and was somewhere between 10 and 20 feet from the doorway on the sidewalk.

In an April 10, 2001 decision, the Office hearing representative found that appellant had not established that the accident occurred on the premises of the employing establishment and therefore appellant could not be considered to have sustained an injury in the performance of duty. The hearing representative therefore affirmed the Office's October 28, 2000 decision.

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

The Federal Employees' Compensation Act[2] 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."[3] In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.[4] 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 travelers.[5]

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."[6]

Appellant was injured at 4:52 p.m. on the sidewalk located outside of the employing establishment, after she left her workplace. She did not establish that she was injured on the premises of the employing establishment when she was attacked on June 15, 2000. There is no evidence that her incident and resultant injuries occurred on property owned or controlled by the employing establishment. Appellant therefore did not establish that she was injured on the premises of the employing establishment. In this case, she has not shown that the sidewalk on which she was injured from an unknown assailant, was used exclusively or principally by employees of the employing establishment for the convenience of the employer.[7] The employing establishment leased space inside the building, 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 itself, shared by all travelers.[8]

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[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

[4] *Conrad F. Vogel*, 47 ECAB 358 (1996).

[5] *Robert F. Hart*, 36 ECAB 186 (1984); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

[6] *See Conrad F. Vogel*, *supra* note 4.

[7] *Mary Keszler*, 38 ECAB 735 (1987).

[8] *Shirley Borgos*, 31 ECAB 222 (1979).

Under the facts of this case, it also cannot be said that appellant's injury occurred within the special hazard exception to the premises rule. The Board has determined that under special circumstances the "premises rule" is extended to hazardous conditions which are proximately located to the premises and therefore may be considered as hazards of the employing establishment. This exception to the premises rule contains two components. The first is the presence of a special hazard at the particular off premises route. The second is the close association of the access route to the employing establishment, such that ingress and egress from the employing establishment must be made from this route.[9] In this case, appellant has not established a special hazard at the point where she was injured by an unknown assailant, it is not necessary to examine whether the injury occurred on the route employees must traverse to reach the employing establishment.

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. In fact, the record reflects that the employing establishment leased space within the building and the building was privately owned. Therefore, appellant has not established that she sustained an injury in the performance of duty.

The April 10, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] *See Jimmie D. Harris, Sr.*, 44 ECAB 997 (1993).