United States Department of Labor
Employees' Compensation Appeals Board

ROSE MARIE HARTMANN, Appellant	)	
and	)	**Docket No. 01-749**
	)	**Issued: August 20, 2004**
SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, Santa Barbara, CA, Employer	)	

Appearances:
Robert Light, Esq., for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 8, 2001 appellant filed an appeal from merit decisions of the Office of Workers' Compensation Programs dated October 6 and March 9, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly rescinded its acceptance of appellant's claim for compensation for an injury sustained on February 22, 1999 on the basis that she was not in the performance of duty at the time of the injury.

FACTUAL HISTORY

On February 25, 1999 appellant, then a 49-year-old legal assistant, filed a traumatic injury claim for compensation for injuries to her hands, shoulders, knees, legs, back and neck sustained on February 22, 1999 when she fell over a bicycle rack in an underground parking garage during a power outage. The employing establishment reported that there was an electrical

power failure in the entire office building, that as a result all employees were released from work during working hours, that appellant went to her car in the underground parking lot, that this facility was maintained by Towbes Management Group and that there was no emergency power light source in the area, making it pitch black when appellant went there on February 22, 1999.

During a telephone call from the Office on September 7, 1999, appellant's attorney stated that there was a power outage in the building and appellant was sent out through the parking lot.

On September 7, 1999 the Office advised appellant that it had accepted her claim for strains of the low back and neck and contusions of the upper and lower extremities.

On September 8, 1999 the Office received the employing establishment's September 3, 1999 response to its August 3, 1999 inquiry about the status of the parking garage in which appellant was injured. The employing establishment stated:

> "Part of the parking lot is leased by the federal government. The parking spaces (six) are assigned to the Administrative Law Judges and Management. Social Security employees park in these spaces when available. [Appellant] did not park in the area leased by the federal government. [She] had her own personal arrangements with another tenant in the building."

In response to a February 22, 2000 Office inquiry, appellant stated that the bicycle rack over which she fell was "just outside the door leading from the elevators into the garage," that she went to the garage to reach her car which was parked there and that the [employing establishment] assisted in making the parking space available but did not pay any of the monthly charge. In a telephone conversation on March 8, 2000, the employing establishment stated that the level of the parking garage where appellant was injured was for the garage only and was not a public access walkway like a lobby.

By decision dated March 9, 2000, the Office rescinded its acceptance of appellant's claim, finding that her injury did not fall within any of the recognized exceptions to the rule that injuries sustained by employees having fixed hours and places of work while going to or coming from work are not compensable.

Appellant requested a hearing, which was held on July 31, 2000. She testified that the employing establishment did not assist her in getting her parking space. Appellant's attorney submitted a brief in which he contended that appellant's injury was compensable under the proximity rule, as a special hazard and because she was in a zone of danger.

By decision dated October 6, 2000, an Office hearing representative found that the Office properly rescinded its acceptance of appellant's claim, as her injury arose out of the ordinary nonemployment-related hazards of the journey itself which are shared by all travelers.

LEGAL PRECEDENT

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where

supported by the evidence, set aside or modify a prior decision and issue a new decision.[1] Pursuant to the Office's regulation, the A[ct] specifies that an award for or against payment of compensation may be reviewed at anytime on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded or award compensation previously denied."[2] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[3] It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation.[4]

Under the Act an injury sustained by an employee having fixed hours and place of work, while going to or coming from work, is generally not compensable because it does not occur in the performance of duty. This is in accord with the weight of authority under workers' compensation statutes that such injuries do not occur in the course of employment. However, many exceptions to the rule have been declared by courts and workers' compensation agencies. One such exception, almost universally recognized, is the premises rule: An employee going to or coming from work is covered under workers' compensation while on the premises of the employer. 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. Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the "premises" of the employing establishment. 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.[5]

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; 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 legal title. The term "premises" as it is generally used in workers' compensation law, is not synonymous with "property." The former does not depend on

[1] *Eli Jacobs*, 32 ECAB 1147 (1981).

[2] 20 C.F.R. § 10.610 (2000).

[3] *Shelby J. Rycroft*, 44 ECAB 795 (1993); *Compare Lorna R. Strong*, 45 ECAB 470 (1994).

[4] *Shelly D. Duncan*, 54 ECAB __ (Docket No. 02-1260, issued January 22, 2003).

[5] *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991).

ownership, nor is it necessarily coextensive with the latter. In some cases, "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."[6]

The Board has recognized that under certain circumstances the premises of the employer are extended by hazardous conditions near the employee's fixed place of work. Under the "proximity rule" the industrial premises are constructively expanded to those hazardous conditions which are proximately located to the premises and may therefore be considered as hazards of the employment. The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.[7] The fact that the accident happens upon a public highway or at a railroad crossing and that the danger is one to which the general public is likewise exposed, is not conclusive against the existence of such a causal relationship, if the danger is one to which the employee, by reason of and in connection with the employment, is subjected peculiarly or to an abnormal degree.[8]

A closely related rule is the "special hazard" rule, which extends the premises of the employer on the basis 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 therefore the special hazards of that route become the hazards of the employment. This rule has two components: (1) the presence of a special hazard at the particular off-premises route; and (2) a close association of the access route with the premises, so far as going and coming are concerned.[9]

ANALYSIS

In the present case, appellant was an employee with fixed hours and place of work. The parking garage where she parked and where she was injured on February 22, 1999 was not owned, leased (except for six spaces) or managed by the employing establishment and appellant did not have a space assigned or paid for by the employing establishment. Under these circumstances, the parking garage is not considered part of the premises of the employing establishment. Her parking in the garage was a matter of her own personal convenience.

On appeal appellant's attorney argues that the premises of the employing establishment, however, are extended to the parking garage by operation of the "proximity" or the "special hazard" rule, with the hazard being the darkness and absence of emergency lighting in the underground parking garage. While this hazard was on appellant's normal route to and from the

[6] *Denise A. Curry*, 51 ECAB 158 (1999).

[7] *Sallie B. Wynecoff*, 39 ECAB 186 (1987); *Dollie J. Braxton*, 37 ECAB 186 (1985).

[8] *Estelle M. Kasprzak*, 27 ECAB 339 (1976). The rule was first recognized by the Board in *Lillie J. Wiley*, 6 ECAB 500 (1954), where the Board quoted with approval Justice Sutherland in *Cudahy Packing Co. v. Parramore*, 263 U.S. 418, 424 (1921).

[9] *Michael K. Gallagher*, 48 ECAB 610 (1997); *Bettie J. Broadway*, 44 ECAB 265 (1992); A. Larson, *The Law of Workers' Compensation* § 13.01[3] (2000).

employing establishment's premises, the Board finds that the site of appellant's injury does not have the necessary close nexus[10] or causal connection[11] to her employment to bring it within the proximity or special hazard rules.

The record does not support the application of the special hazard rule. The hazard encountered by appellant was not an exceptional or uncommon hazard. The danger of the darkened parking garage is similar to the dangers of an assault on the streets of St. Petersburg while going to work in *Jimmie D. Harris, Sr.*,[12] the wax on the public plaza immediately outside the only exit in *Sallie B. Wynecoff*,[13] the traffic accident on the highway resulting from a backup for a security checkpoint at the employing establishment in *Bettie J. Broadway*[14] or the icy sidewalk maintained by the employer in *Denise A. Curry*,[15] which were found to be hazards common to all travelers. The Board did not find these dangers sufficiently connected to the employment to bring them within an exception to the premises rule and the same result must apply here.

CONCLUSION

The Office met its burden of proof to rescind acceptance of appellant's claim, for the reason that her injury on February 22, 1999 does not fall within the "proximity" or "special hazard" rules extending the premises of the employing establishment to the private parking garage in which she was injured.

[10] *Dollie J. Braxton, supra* note 7.

[11] *Sallie B.Wynecoff, supra* note 7; *Thomas P. White*, 37 ECAB 728 (1986).

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

[13] *Supra* note 7.

[14] *Supra* note 9.

[15] *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the October 6 and March 9, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member