United States Department of Labor
Employees' Compensation Appeals Board

ANDREW A. ADKINS, Appellant	)	
and	)	**Docket No. 04-1072**
	)	**Issued: August 10, 2004**
DEPARTMENT OF TRANSPORTATION, TRANSPORTATION SAFETY ADMINISTRATION, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, 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 March 15, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 17, 2004 which denied his claim of an injury sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(d) and 501.3 the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On January 6, 2003 appellant, then a 29-year-old transportation security screener, filed a traumatic injury claim, noting that on December 16, 2002 as he was leaving work in a parking lot at the Hopkins Airport in Cleveland Ohio and attempting to get into his car he slipped on a patch

of ice and twisted his back. The claim form listed appellant's tour of duty as "6:00 to 13:30" and the time of injury was listed as "14:40."

A January 27, 2003 magnetic resonance imaging scan revealed developmental narrowing of the spinal canal at L1-2, L2-3, L3-4, L4-5, a large disc herniation to the left at L4-5 extending into the foramen of L4-5, and a centrally large disc herniation at L3-4. Appellant was later diagnosed with lumbar radiculopathy.

The employing establishment noted that the parking facility where appellant fell was approximately one mile from his work site and that employees were shuttled to and from the work site to the parking area. The employing establishment noted that employees paid for their own parking expenses and that the parking lot was owned by the city of Cleveland and was not leased by the employing establishment.

In a March 26, 2003 memorandum of a telephone conference between an employing establishment official and an Office claims examiner, it was reiterated that the employee parking lot was neither leased by, owned, maintained, managed or controlled by the employing establishment but was owned and operated by the city of Cleveland, as was the entire airport, and that the employees were required to pay to park on the lot.

In a conference memorandum, appellant confirmed that the city owned and operated the entire airport and the parking lots around it, that he got off duty early on December 16, 2003, and took the airport shuttle to the parking lot. He got off the shuttle and walked to his car, indicating that the parking lot was covered with snow and ice. Appellant stated that when he arrived at his car, between 2:15 p.m. and 2:20 p.m., he reached for the door handle and slipped on the ice, falling to the ground twisting his back. Appellant contended that the employing establishment had directed employees to park in that specific lot.

By decision dated April 17, 2003, the Office denied appellant's claim finding that the fall did not occur while he was in the performance of duty. The Office found that the injury did not take place in a parking lot owned or operated by the employing establishment, but rather one owned by the city, such that he was not in the performance of duty when he fell.

An April 21, 2003 letter from appellant's attorney requested an oral hearing.

A hearing was held on November 18, 2003 at which appellant testified. Appellant's attorney argued that appellant was told to park in the parking lot in question, that he was given a key card for access, and that public transportation was not available to him from the lot to the terminal.

By decision dated February 17, 2004, an Office hearing representative affirmed the April 17, 2003 decision, finding that the parking lot was not part of the employing establishment premises. The hearing representative found that appellant was not in the performance of duty when he fell.

LEGAL PRECEDENT

Appellant's injury occurred while he was walking in a parking lot which was not part of the employing establishment premises. The issue before the Board therefore is whether this off-premises injury was sustained in the performance of duty. Concerning off-premises injuries, the Board has stated:

> "As a general rule, off-premises injuries sustained by employees have 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, *i.e.*, in the performance of duty, but are merely the ordinary, nonemployment hazards of the journey itself which are shared by travelers."[1]

For appellant's claim to prevail, the evidence must establish that the injury occurred on the actual premises of the employing establishment or in an area which may be considered part of the employing establishment.

Under certain circumstances, a parking lot for the use of employees may be considered a part of the employment premises.[2] Factors bearing on this determination are 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; and whether the parking areas were checked to see that no unauthorized cars were parked in the lot.[3] 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 this parking for its employees.[4]

Under the Federal Employees' Compensation Act[5] 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 but out of the ordinary nonemployment hazards of the journey itself, which are shared by all travelers. This is in accord with the weight of authority under workers' compensation statutes that such injuries do not occur in the course of employment.[6] However, many exceptions to the rule have been declared by courts

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

[2] *See Gladys W. Hansen*, 8 ECAB 603 (1956); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971); *Cf. Edith F. Bolet*, 6 ECAB 245 (1953); *Raymond F. Brennan*, 14 ECAB 249 (1963), 13 ECAB 173 (1961).

[3] *Raymond F. Brennan, supra* note 2.

[4] *See Edythe Erdman*, 36 ECAB 597 (1985).

[5] 5 U.S.C. § 8101 *et seq.*

[6] *See* A. Larson, *The Law of Workers' Compensation* § 13.01; *Nancy S. Hardin*, 38 ECAB 285 (1986); *John E. Phifer*, 8 ECAB 77 (1955).

and workers' compensation agencies. One such exception, almost universally recognized, is the premises rule: an employee going to or from work is covered under workers' compensation while on the premises of the employer.[7]

The Board has held that the term "premises" of the employer, as that term is used in workers' compensation law, is 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.[8]

Further the Board has held that this term is not synonymous with property. The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some case "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."[9]

ANALYSIS

In this case the parking lot where appellant fell was not coterminous with that of the employing establishment and was not owned, operated or leased by the employing establishment. Although the airport shuttle was provided for the use of employing establishment employees parking in that lot to reach their assigned duty stations, appellant did not fall while getting off the shuttle. He fell on ice after walking to his car. Therefore, there was no connection with the employing establishment or his duties and the exception regarding employing establishment parking lots does not directly apply.

Further, appellant did not establish that the parking lot was used exclusively or principally by employees of the employing establishment for the convenience of the employer. He merely stated that he was instructed to park there to avoid the high expense of airport parking. That is insufficient to bring the parking lot under the extended premises doctrine.

Additionally, the special hazard, ice and snow, was next to his car and not on the exclusive route for ingress to or egress from the employing establishment. Appellant did not have to step on the ice to get to or from work, such that that exception does not apply. Moreover, appellant was not required to use his own car in the performance of his duties, and therefore his trip to his car does not fall under that exception noted above.

Although appellant left work early and was in the process of going home, he was not still on duty and had left the premises that could be said to be under the ownership, lease, management or control of the employing establishment. Although he committed no significant deviation from his course, there was more than a reasonable interval between appellant's leaving his duty station, riding the shuttle to the remote parking lot, and walking to his car. Appellant

[7] *William L. McKenney*, 31 ECAB 861 (1980).

[8] *Wilmar Lewis Prescott, supra* note 2.

[9] *Id*.

was still in the process of going home, the time since he left work amounted to about 40 minutes, since he left work early, around, if not before 2:00 p.m. and had his fall occurred at 2:40 p.m.[10] Therefore, a significant interval had passed from the time he left work to the time of his fall at his car.[11] What constitutes a reasonable interval before and after official working hours depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the activity. In this case appellant had egressed the transportation van and walked the extent of the parking lot to get to his car.

Since more than a reasonable interval had passed between the time appellant signed out of work and the time he slipped on the ice at his car, since the parking lot was not part of the employing establishment under any exception, since using his car was not required of him to perform his duties, and since the ice was not a special hazard of his employment but was a hazard for all travelers, appellant had not established that he sustained a injury in the performance of duty. The proximity rule also does not apply as the route to his car that day was personal to him, depending on which space he parked in, and the ice hazard had no connection with his employment, and as access to the parking lot had not been proven to be limited to employing establishment personnel.

CONCLUSION

Appellant has failed to establish that he sustained an injury in the performance of duty, as he was off duty, as he was not performing any function for the employing establishment and as the parking lot where he fell had no specific relationship to the employing establishment.

[10] Although appellant also estimated the time of his accident at 2:15 p.m. and 2:20 p.m., his claim form stated 14:40 p.m. (military time) as the time of injury, which the Board notes is the same as 2:40 p.m.

[11] *Eileen R. Gibbons*, 52 ECAB 209 (1999); *see Linda S. Jackson*, 49 ECAB 486 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 17, 2004 and April 17, 2003 are hereby affirmed.

Issued: August 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member