United States Department of Labor
Employees' Compensation Appeals Board

IDALAINE L. HOLLINS-WILLIAMSON, Appellant	)	
and	)	**Docket No. 04-1147**
	)	**Issued: August 23, 2004**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Detroit, MI, Employer	)	

Appearances:
Paul H. Kullen, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On March 31, 2004 appellant filed a timely appeal of the February 4, 2004 merit decision of the Office of Workers' Compensation Programs, which found that appellant did not sustain an injury in the performance of duty on February 25, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on February 25, 2003.

FACTUAL HISTORY

On March 4, 2003 appellant, then a 55-year-old bankruptcy specialist, filed a traumatic injury claim alleging that on February 25, 2003 while she was walking from her automobile, which was parked in a City of Detroit parking lot to the employing establishment building, she

fell on a snow covered sidewalk and injured her left side. The incident occurred at 5:30 a.m. and appellant's regularly scheduled hours were from 7:00 a.m. to 3:30 p.m. Appellant stopped work on February 25, 2003.

In a statement dated February 25, 2003, appellant indicated that at 5:50 a.m. she was walking from a parking lot to the employing establishment and stepped onto the snow covered sidewalk and fell into a hole injuring her left hand, wrist, ankle and side. She reported her fall to a parking lot attendant. In support of her claim, appellant submitted return to work instructions from Dr. William Crowley, a Board-certified general surgeon, dated February 25, 2003, who noted treating appellant for a sprained ankle and bruised hip. Attending physician's reports from Dr. Jeffrey Parker, a Board-certified internist, dated March 3 to April 1, 2003, noted that appellant slipped and fell on the pavement near the parking lot of her office building and sustained a contusion of the hip, ankle, chest and shoulder.

In a telephone conference dated April 4, 2003, between appellant and the claims examiner, appellant clarified that her injury occurred at 5:50 a.m. not 5:30 a.m. as reported by her supervisor on the Form CA-1. Appellant noted that her work hours were from 7:00 a.m. to 3:30 p.m., but indicated that she reported to work early in order to earn credit time. She indicated that she parked in a lot across from the employing establishment which was located at 604 Abbot Street and walked on a public sidewalk between the parking lot and the street to enter her building. Appellant noted that she paid a parking fee of $75.00 per month to the City of Detroit and believed the employing establishment had a contract with the city which permitted employees to park in the lot. She further noted that her parking was partially subsidized by the employing establishment because nonemploying establishment personnel paid a higher fee of $100.00 per month to park in the lot. Appellant indicated that the parking lot was not exclusive to employing establishment personnel and was open to the public for parking. She also noted that there were other parking lots available to employing establishment personnel; however, they were not in close proximity to the building in which she worked. She was unaware of who owned, maintained or controlled the parking lot and sidewalk where the incident occurred. Appellant stated that she was required to request permission from her supervisor to work extra hours to earn credit time. She also submitted photographs of her body after she sustained the injuries in the fall of February 25, 2003.

The Office requested additional information from the employing establishment to establish whether appellant was injured in the performance of duty on February 25, 2003. In a statement dated April 16, 2003, Jacqueline V. Ellington, an insolvency manager, noted that appellant's regular tour of duty was from 7:00 a.m. to 3:30 p.m., Monday through Friday. She noted that the employing establishment credit time policy permitted employees to work a maximum of two credit hours per day, but they could not start their tour of duty prior to 6:00 a.m. Ms. Ellington advised that appellant's accident occurred between 5:30 a.m. and 5:50 a.m. when she was reporting early to work in order to earn credit time. She indicated that the parking lot where appellant parked, the street beside the parking lot and the sidewalk where the accident occurred, were all owned and maintained by the City of Detroit. Ms. Ellington further noted that the employing establishment did not subsidize parking for its employees. She indicated that there was a piece of concrete cut out of the unshoveled sidewalk where appellant fell and that maintenance work was being performed underground which was contracted for by the City of Detroit. Ms. Ellington indicated that appellant walked from her car approximately

40 feet to the sidewalk and cut through barriers placed by the City for safety and security. She advised that the parking lot and the sidewalk were not used exclusively by the employing establishment personnel but also utilized by the public. Ms. Ellington advised that, on February 25, 2003, the snow crew, which was employed by the building, shoveled a path through the snow to the building. She indicated that there were at least four other parking facilities in a four block radius of the employing establishment building available to employees for parking.

In an April 25, 2003 decision, the Office rejected appellant's claim on the grounds that she had not established that she was injured on the premises of the employing establishment.

In a May 13, 2003 letter, appellant's representative requested a hearing before an Office hearing representative. The hearing was held on November 5, 2003. Appellant submitted an x-ray of the left shoulder which revealed a possible fracture of the inferior glenoid. Also submitted was a report from Dr. Crowley dated March 18, 2003 which noted a history of injury and diagnosed a contusion of the left hip and shoulder. Other reports from Dr. Richard Krugel, a Board-certified orthopedist, dated May 22 to November 3, 2003, noted a history of injury and diagnosed cervical disc disease with radiculitis of C5 and C7, shoulder pain secondary to a probable inferior glenoid fracture, and degenerative disc disease. He opined that these injuries were the result of her slip and fall on February 25, 2003. Dr. Parker noted, in a report dated October 3, 2003, that appellant sustained a slip and fall accident on February 25, 2003 and diagnosed a shoulder fracture, trauma to the cervical spine with possible cervical disc damage, and cervical and lumbar radiculopathy.

In a February 4, 2004 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 April 25, 2003 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] 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."[2] 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.[3] 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.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] *See Mark Love*, 52 ECAB 490 (2001); *Conrad F. Vogel*, 47 ECAB 358 (1996).

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

In defining what constitutes the premises of an employing establishment, the Board has stated:

> "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."[5]

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.[6] 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.[7] 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.[8]

ANALYSIS

In this case, appellant had fixed hours of work from 7:00 a.m. to 3:30 p.m. and was injured as she was traveling to work at 5:50 a.m. Appellant did not establish that she fell on the premises of the employing establishment when she fell on February 25, 2003. The evidence of record, including statements from appellant and Ms. Ellington, an employing establishment manager, establish that appellant's injury occurred on the public sidewalk in front of the employing establishment when she was walking from the parking lot to the employing establishment building. The evidence supports that the parking lot and the sidewalk where appellant's accident occurred were owned, operated and maintained by the City of Detroit. Additionally, appellant's statements confirm that she paid her monthly parking fee of $75.00 to the City of Detroit and further noted that the parking lot was not exclusively used by employing establishment personnel and was open to the public. The Board therefore finds that, in this case, appellant has not shown that the sidewalk on which she fell was used exclusively or principally by employees of the employing establishment for the convenience of the employer.[9] The employing establishment 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

[5] *See Conrad F. Vogel, supra* note 3.

[6] *See Linda D. Williams*, 52 ECAB 300 (2001); *Michael K. Gallagher*, 48 ECAB 610 (1997).

[7] *Id.*

[8] *Id.*

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

of the journey itself, shared by all travelers.[10] Appellant therefore did not establish that she was injured on the premises of the employing establishment.[11]

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.[12] The record in the case at hand 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. Ms. Ellington advised that the employing establishment did not own, lease or manage the parking lot or the sidewalk and that the sidewalk was not used exclusively by employing establishment personnel but that other tenants of the building as well as the general public walked on the sidewalk to reach the street. She further noted that the employing establishment was not responsible for snow removal and that, on February 25, 2003, the snow crew which was employed by the building, shoveled a path for employees of the building. Finally, she indicated that there were other parking facilities available to appellant which were within a four block radius of the employing establishment. There is no evidence that appellant's fall and resultant injury occurred on property owned or controlled by the employing establishment. Under these circumstances, the Board finds that the sidewalk on which appellant was injured did not have "such proximity and relation as to be in practical effect a part of the employer's premises."[13] Appellant's slip and fall on February 25, 2003 thus constituted an off-premises injury while going or coming from work, which is not compensable as it did not arise out of and in the course of employment, but out of ordinary nonemployment hazards of the journey itself which are shared by all travelers.[14]

CONCLUSION

The Board finds that appellant's injury of February 25, 2003 was not sustained while in the performance of duty.

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

[11] *See Mark Love*, *supra* note 3.

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

[13] *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

[14] *Jacqueline Nunnally-Dunord*, 36 ECAB 217 (1984).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member