United States Department of Labor
Employees' Compensation Appeals Board

LINDA BROOKS, Appellant	)	
and	)	**Docket No. 04-36**
	)	**Issued: February 2, 2004**
DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
Linda Brooks, pro se
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 September 26, 2003 appellant filed an appeal from the Office of Workers' Compensation Programs' merit decision dated April 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 the Office properly denied appellant's claim on the grounds that she was not in the performance of duty at the time of her injury on April 2, 2002.

FACTUAL HISTORY

On May 15, 2002 appellant, then a 40-year-old associate advocate, filed a traumatic injury claim alleging that on April 2, 2002, while leaving work and going to her car, she slipped on a pathway and fell, injuring her lower back and tailbone. By letter dated July 8, 2002, the Office asked her to respond to questions regarding the alleged injury. In response, appellant submitted numerous medical reports and a statement indicating that she experienced trouble getting up, walking, talking, speaking and comprehending and has encountered undue hardship

because of her injury and stress. She responded to questions asked by the Office. Appellant indicated that she fell to the concrete walk due to the straw debris in the walkway and fell onto her buttocks and her back. She noted that there were no witnesses to the incident.

In response to a question from the Office, the employing establishment noted that the owner of the building was Koger Equity and that Koger maintained the parking lot. The employing establishment noted that appellant stated that the time of injury was 4:31 or 4:37 p.m. The employing establishment also submitted maps of the building and premises. The record contains a note of a telephone call from the Office to the employing establishment, and was informed that appellant was a fixed place employee and that her assignment was a desk position.

By decision dated September 10, 2002, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the injury arose out of and in the course of employment because the injury did not occur on the premises of the employing establishment.

On September 30, 2002 appellant requested an oral hearing. The hearing was held on March 6, 2003. Appellant testified that she worked in the Fordham Building, which is a part of a group of buildings called the Koger Center. She noted that the building was completely occupied by the employing establishment. Appellant indicated that, at the time of the incident, she was to get off work at 4:30 p.m. and take work home with her and knew that she would need to make two trips from her office. She made what was to be her first trip at 4:27 p.m. and that when she went to step off the curb that was attached to her building, she fell on her back. She testified that, after lying on the ground for a few minutes, she proceeded to her van and drove home, without returning to make the second trip. Appellant noted that she parked in a marked parking space on the side of the building reserved for employees in the Fordham Building. She noted that she was unable to determine if the parking area was leased and controlled by the employing establishment. Appellant did note that to get into the building you had to have a government badge and that you could not park in the parking spaces if you were not a government employee. She indicated that the security guards for the building were paid for by the employing establishment.

Appellant alleged that other workers had injuries sustained inside and outside of the building and that the cases were covered by the Office. She further submitted information that she found on the internet. Appellant also submitted a note from Willie Brooks wherein he indicated that other employees have received Office benefits who were injured at the building. She submitted employee time reports. By letter dated April 3, 2003, the employing establishment again indicated that the parking lot was owned by Koger Equity and maintained by that company.

By decision dated April 25, 2003, an Office hearing representative affirmed the Office's September 10, 2002 decision denying compensation finding that appellant's injury did not occur in the performance of her federal duties.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and the course of employment" "In the course of employment" relates to the elements of time, place an circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's business, at a place where she may reasonably be expected to be in connection with the employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3] The employee must also establish an injury "arising out of the employment." To arise out of employment the injury must have a casual connection to the employment, either by precipitation, aggravation or acceleration.[4] The Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours or at lunch time are compensable.[5]

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.[6] The term "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.[7]

The Board has also pointed out the 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

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[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] *Mona M. Tates*, 55 ECAB ___ Docket No. 03-892 (issued October 6, 2003); *Timothy K. Burns*, 44 ECAB 125 (1992).

[4] *John B. Shutack*, 54 ECAB ___ Docket No. 02-2143 (issued January 8, 2003); *see also Bettina M. Graf*, 47 ECAB 687 (1996).

[5] *Diane Bensmiller*, 48 ECAB 675 (1997).

[6] *Linda Williams*, 52 ECAB ___ Docket No. 99-443 (issued March 9, 2001).

[7] *See Dollie J. Braxton*, 37 ECAB 186 (1985); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

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.[8]

The Board notes that proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

The fact that the parking lot where appellant was injured was not controlled or owned by the employing establishment does resolve the issue in this case. Appellant testified that the place where she parked was reserved for workers in the Fordham Building and that the Fordham Building was leased in its entirety by the employing establishment. It was necessary for the Office to then ask the employing establishment further questions, such as whether the employing establishment contracted for 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 area was checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to employees, whether the public was permitted to use the lot and whether other parking was available to the employees. Without answers to these questions, the Board is unable to determine whether appellant's injury occurred on the premises of the employing establishment.

CONCLUSION

Under the circumstances described above, the Board finds that this case is not in posture for decision. The case will be remanded for further development as to whether appellant was injured on the premises of the employing establishment.

[8] *Rosa M. Thomas Hunter,* 42 ECAB 500, 504 (1991); *Edythe Erdman,* 36 ECAB 597 (1985).

[9] *William J. Cantrell,* 34 ECAB 1223 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2003 is hereby set aside and this case is remanded for further consideration consistent with this opinion.

Issued: February 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member