United States Department of Labor
Employees' Compensation Appeals Board

SHARON M. HENRY, Appellant	)	
and	)	**Docket No. 05-512**
	)	**Issued: June 16, 2005**
GENERAL SERVICES ADMINISTRATION, FEDERAL TECHNOLOGY SERVICE, Kansas City, MO, Employer	)	

Appearances:
Sharon M. Henry, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 27, 2004 appellant filed a timely appeal of the December 14, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a February 21, 2003 traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 21, 2003.

FACTUAL HISTORY

On March 13, 2003 appellant, a 41-year-old marketing director, filled a traumatic injury claim alleging that she sustained a facial laceration, bruises and cracked and damaged front teeth as a result of a February 21, 2003 fall. She stated that at 5:30 p.m. while walking down the handicap ramp she hit some decorative rock, twisted her ankle and fell forward on her face. The

incident allegedly occurred on the employing establishment premises in the general vicinity of the childcare center. On the claims form the employing establishment indicated that appellant's regular tour of duty was 8:30 a.m. to 5:00 p.m., Monday through Friday and she was not injured in the performance of duty.

The employing establishment's February 24, 2003 investigative report revealed that a security officer was notified at 5:35 p.m. on February 21, 2003 about a nontraffic accident that occurred at the employing establishment childcare center. However, appellant had already left the area. The investigation was resumed the following Monday, February 24, 2003, at which time it was learned that appellant had retrieved her son from the childcare center and as she was walking down the ramp outside the center she slipped on the uneven pavement. Appellant reportedly had fallen face-first, striking the left side of her face on the pavement. The report further indicated that she received multiple abrasions to her face, hands and knees and her most serious injuries included seven stitches to the left eyebrow, two cracked teeth and a mild concussion.

Appellant submitted billing statements for treatment received on February 21, 2003 in the emergency room at the Shawnee Mission Medical Center. The documentation also included instructions for a facial laceration and follow-up care. Appellant also submitted a bill for an April 1, 2003 root canal on tooth number 10.

On April 22, 2004 the Office requested additional factual and medical information regarding appellant's alleged injury on February 21, 2003. The Office specifically inquired about what appellant was doing at the time of her injury and whether she had been authorized to remain at work beyond her normal departure time of 5:00 p.m.

In a supplemental statement dated May 20, 2004, appellant explained that at the time of her injury she was at the employing establishment's daycare center picking up her child who was enrolled there. She also indicated that she worked on a flextime schedule and on the day of her accident she was flexing until 5:30 p.m. because there was an urgent requirement to prepare materials for an off-site meeting the following Monday. Appellant stated that her accident occurred at approximately 5:30 p.m. Appellant's supervisor, Ronald Q. Williams, noted his concurrence with the May 20, 2004 statement. Additionally, appellant advised the Office that the requested medical evidence would be forthcoming once the information was received from her various medical and dental providers.

In a decision dated June 1, 2004, the Office denied the claim. The Office indicated that the record established that the incident occurred while appellant was on the employing establishment premises shortly after completing work for the day. However, the medical evidence did not establish that appellant sustained an injury as a result of the February 21, 2003 fall.

Appellant requested reconsideration on October 20, 2004. Her request was accompanied by a September 16, 2004 report from Dr. Stephen B. Lund, who initially treated appellant in the emergency room on February 21, 2003.[1] The September 16, 2004 report noted abrasions to the

[1] Dr. Lund is Board-certified in emergency medicine.

hands and knees and a laceration to the left eyelid and eyebrow. The reported history of injury was that appellant suffered a fall at work on February 21, 2003. Dr. Lund diagnosed facial laceration, which he attributed to the February 21, 2003 fall. Appellant also submitted her February 21, 2003 emergency room treatment records, which included a diagnosis of 3.5 centimeters laceration to the face. She received six sutures in her left eyebrow. Additionally, appellant submitted dental treatment records from Dr. Sara A. Hodges, covering the period February 27 to April 1, 2003. Dr. Hodges performed an April 1, 2003 root canal on appellant's number 10 tooth.

By decision dated December 14, 2004, the Office modified the June 1, 2004 decision to reflect a denial of the claim on the basis that appellant was not in the performance of duty when she fell on February 21, 2003. The Office explained that at the time of appellant's injury she was at the daycare center retrieving her son and, therefore, she had deviated from the scope of her employment once she left the immediate area for personal reasons.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.[2] The Board has interpreted the phrase "sustained while in the performance of duty" as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3] The phrase "in the course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. An injury must occur: (1) at a time the employee may be reasonably said to be engaged in the master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[4]

As to employees having fixed hours 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] Given this rule, the Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable time while the employee is on the premises engaged in incidental acts and is based on the circumstance of the employee's activity.[6] However, presence at the employing establishment's premises during work hours or a reasonable period before or after a duty shift, is insufficient, in and of itself, to establish entitlement to benefits for compensability. The claimant must also establish the concomitant requirement of an injury "arising out of the employment." This

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert W. Walulis*, 51 ECAB 122 (1999).

[5] *Narbik A. Karamian*, 40 ECAB 617 (1989).

[6] *Maryann Battista*, 50 ECAB 343 (1999).

encompasses not only the work setting, but also the causal concept that some factor of the employment caused or contributed to the claimed injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefit is derived or an employment requirement gave rise to the injury.[7]

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities, unrelated to his or her employment. The Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was "aimed at reaching some specific personal objective."[8]

ANALYSIS

The Office determined that appellant's February 21, 2003 fall was beyond the purview of the Act because at the time of her injury she was retrieving her son from the employing establishment daycare center and, therefore, had deviated from the scope of her employment. In *Mary Beth Smith*[9] an employee sustained an injury while attending to her son's needs at the employer-sponsored daycare facility. Shortly, after arriving at work on the morning of June 10, 1993, Ms. Smith received a call from the daycare center advising that her son had been injured. With her supervisor's permission, Ms. Smith left her work area and drove to the daycare facility, which was located at the employing establishment's main complex.[10] As she entered the daycare center's main room, Ms. Smith tripped on the carpet and fell, fracturing her left foot. Although appellant was injured on the employing establishment's premises during her regular work hours, the Board concurred with the Office's determination that she was not in the performance of duty when her injury occurred. The Board found that appellant was engaged in a purely personal activity. Ms. Smith's presence at the daycare facility did not involve fulfilling the duties of her employment nor was she engaged in something incidental thereto.[11]

The circumstances in the present case are distinguishable from *Mary Beth Smith*. While the record reflects that appellant had momentarily stopped to retrieve her son from the daycare center, her fall actually occurred after she completed that task. The February 24, 2003 incident report stated that appellant "was walking down the ramp outside the daycare [center] when she slipped on the uneven pavement." When appellant fell she was doing nothing more than exiting

[7] *Cheryl Bowman*, 51 ECAB 519 (2000); *Shirlean Sanders*, 50 ECAB 299 (1999); *Charles Crawford*, 40 ECAB 474 (1989).

[8] *Rebecca LeMaster*, 50 ECAB 254 (1999).

[9] 47 ECAB 747 (1996).

[10] Ms. Smith worked at a satellite facility across the street from the employing establishment's main complex.

[11] The Board also found that, although Ms. Smith obtained her supervisor's permission, her activities could not be characterized as a "special mission" authorized by her employer to further the mission or business of the agency.

the employing establishment premises just five minutes after the conclusion of her workday. Appellant's departure from the employing establishment premises was incidental to her employment. She is permitted a reasonable interval of time before and after official working hours for engaging in preparatory or incidental acts while on the premises.[12] Accordingly, the Board finds that appellant's February 21, 2003 fall occurred in the performance of duty.

Appellant must also establish that her February 21, 2003 fall caused a personal injury.[13] The emergency room treatment records and Dr. Lund's September 16, 2004 report establish that appellant sustained a facial laceration as a result of the February 21, 2003 fall. While appellant claimed that she also injured two teeth in the fall, her dental records from Dr. Hodges do not adequately describe the exact nature of any injury attributable to the February 21, 2003 employment incident. Therefore, appellant's traumatic injury claim is accepted for facial laceration only.

CONCLUSION

The Board finds that appellant sustained a facial laceration in the performance of duty on February 21, 2003.

[12] *Eileen R. Gibbons*, 52 ECAB 209, 211-12 (2001).

[13] In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. *Elaine Pendleton*, 40 ECAB 1143 (1989). The second component is whether the employment incident caused a personal injury. *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2004 decision of the Office of Workers' Compensation Programs is modified to reflect acceptance of the claim for facial laceration and affirmed as modified.

Issued: June 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member