

grounds struck the back of her heel as she entered. She braced herself with her arm to keep from falling. At the end of her workday she was walking to her commuter bus stop when she felt aches in her arm, shoulder and the top of her foot.

Medical notes dated October 27, 2005 indicated that appellant she was on her way to work on October 26, 2005 when the entrance gate struck her right heel.

By letter dated December 2, 2005, the Office stated that appellant's claim form indicated that her injury occurred while she was walking. She was advised to submit additional evidence establishing that her injury was sustained while she was performing a duty of her employment.

In an undated form for authorization and treatment, Dr. Mukesh Mathur, an attending internist, diagnosed sprains of the right shoulder, elbow and foot. He indicated that appellant was struck on the back of her heel by a gate on October 26, 2005.

In a November 2, 2005 report, Dr. Bryan R. Herron, an attending Board-certified orthopedic surgeon, indicated that appellant had experienced right shoulder pain since October 26, 2005 as a result of a traumatic blow to the arm at work. He provided findings on physical examination and diagnosed sprains, strains and contusions of the right shoulder, foot and ankle.

By decision dated January 5, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that her injury was sustained in the performance of duty.

Appellant requested a review of the written record and submitted additional evidence. In a December 27, 2005 report, Dr. Wayne M. Rozran, an attending Board-certified orthopedic surgeon, stated that appellant was injured at work when she was thrown forward after a revolving gate struck her heel. When the gate threw her forward, she injured her right shoulder and right foot. He noted that a magnetic resonance imaging scan revealed a torn right rotator cuff. Dr. Rozran provided findings on physical examination and diagnosed a cervical strain/sprain, a right shoulder rotator cuff tear and right epicondylitis.

By decision dated May 12, 2006, the Office denied appellant's request for reconsideration.¹

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act² 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

¹ Appellant submitted additional evidence subsequent to the Office decision of May 12, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² 5 U.S.C. § 8101-8193.

workers' compensation agencies. One such exception almost universally recognized is the premises rule: an employee going to or coming from work is covered in workers' compensation law while on the premises of the employer. The "premises" of the employer, as that term is used in workers' compensation law, are not necessarily the same as 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 legal status or extent of the legal title to the property. *I.e.*, the term "premises" as it is generally used in workers' compensation law is not synonymous with "property." "Premises" does not depend on ownership, nor is it necessarily coextensive with "property." 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."³

ANALYSIS -- ISSUE 1

Appellant alleged that at 6:40 a.m. on October 26, 2005 she was on her way to work when the revolving entrance to the employing establishment struck the back of her heel. She braced herself with her arm to keep from falling. At the end of her workday she began to experience aches in her arm, shoulder and the top of her foot. October 27, 2005 medical notes indicated that appellant she was on her way to work when the entrance gate struck her right heel. Dr. Rozran stated that appellant was injured at work when she was thrown forward after a revolving gate struck her heel. When the gate threw her forward, she injured her right shoulder and right foot. He diagnosed a cervical strain/sprain, a right shoulder rotator cuff tear and right epicondylitis.

The Office denied appellant's claim on the grounds that the evidence did not establish that she was in the performance of her work duties when the incident occurred. However, the Office did not address the issue of whether appellant was in the performance of duty based on an exception to the "going and coming" rule, sustaining an injury on the "premises" of the employer. The case will be remanded for the Office to conduct such further development of the factual evidence as it deems necessary to determine whether the revolving entrance which struck appellant's foot on October 26, 2005 was located on the premises of the employer. If it finds that the incident occurred on the employer's premises, the Office should then determine whether the medical evidence establishes that appellant's diagnosed injuries were causally related to the incident. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should further develop the factual evidence to determine whether the October 26, 2005 incident involving the revolving entrance occurred on the premises of the employer. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's claim for a work-related injury on October 26, 2005. The second issue on appeal, whether the Office properly denied appellant's request for reconsideration of the January 5, 2006 decision, is rendered moot.

³ *Jimmie Brooks*, 54 ECAB 248 (2002); *see also Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 12 and January 5, 2006 are set aside and the case is remanded for further action consistent with this decision.

Issued: December 8, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board