United States Department of Labor
Employees' Compensation Appeals Board

SHALAZAR M. BROOKS, Appellant	)	
and	)	**Docket No. 06-847**
	)	**Issued: July 6, 2006**
SOCIAL SECURITY ADMINISTRATION, Newark, NJ, Employer	)	

Appearances:
Shalazar M. Brooks, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 27, 2006 appellant filed a timely appeal of a December 23, 2005 merit decision of the Office of Workers' Compensation Programs which found that she did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 13, 2005.

FACTUAL HISTORY

On August 23, 2005 appellant, then a 35-year-old senior case technician, filed a Form CA-1, traumatic injury claim, alleging that on August 13, 2005 she injured her right ankle and foot when she slipped and fell on the street adjacent to the employing establishment. By letter dated September 13, 2005, the Office informed appellant of the evidence needed to support her claim.

In an October 4, 2005 letter, appellant stated that she was scheduled to work overtime on August 13, 2005 and parked her car on Commerce Street at approximately 6:20 a.m. She stated that, as she was crossing the street to the rear entrance of the employing establishment, she "somehow twisted my right foot/ankle and fell," relating that she hopped across the street and entered the building. Appellant noticed swelling and put ice packs around her ankle, took pain medication, and completed five hours of overtime that day. She submitted medical reports dated August 25, 2005, in which Dr. Sandhua Shah, a Board-certified internist, diagnosed an ankle sprain and checked a "yes" box indicating that the condition was employment related. He advised that appellant was totally disabled from August 25 to 28, 2005. Appellant also submitted a statement from a coworker, Vida Key, who reported that on August 13, 2005 while at work, appellant showed her the injured ankle and described the fall.

By decision dated December 23, 2005, the Office denied the claim, finding that, as appellant was injured while in transit to work and not on employing establishment's premises, she did not sustain an injury in the performance of duty on August 13, 2005.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment. 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.[4] In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his employer's business; (2) at a place where he may

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *See* 5 U.S.C. § 8102(a).

[4] *Alan G. Williams*, 52 ECAB 180 (2000).

reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[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 and 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, does not mean the premises are 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 recognized, as a general rule, that off-premises injuries sustained by employees having fixed hours and places 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.[8] Such injuries are merely the ordinary, nonemployment hazards of the journey itself which are shared by all travelers.[9] Certain exceptions to the general premises rule have developed where the hazards of the travel may fairly be considered a hazard of the employment. The Board has held that these recognized exceptions are dependent upon the particular facts and related to situations: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firefighters; and (4) where the employee uses the highway to do something incidental to his or her employment with the knowledge and approval of the employer.[10]

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.[11]

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[5] *Connie J. Higgins (Charles H. Higgins)*, 53 ECAB 451 (2002).

[6] *Jimmie Brooks*, 54 ECAB 248 (2002).

[7] *Id.*

[8] *James P. Schilling*, 54 ECAB 641 (2003).

[9] *Jimmie Brooks*, *supra* note 6.

[10] *Joan K. Phillips*, 54 ECAB 172 (2002).

[11] *Mark Love*, 52 ECAB 490 (2001).

ANALYSIS

The Board finds that appellant's slip and fall on August 13, 2005 did not occur in the performance of duty. It did not occur on the employing establishment's premises but rather in the street adjacent to appellant's workplace, and the record in this case does not establish that the street on which appellant fell was so connected with the employing establishment as to be considered part of the premises of the employing establishment. The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.[12] Appellant has not established a special hazard at the point where she fell. It is therefore not necessary to examine whether the injury occurred on the route the employees must traverse to reach the employing establishment. Likewise, she has not established an exception to the coming and going rule as her employment did not require her to travel; she did not receive an allotment or reimbursement for travel expenses; she was not subject to emergency calls, and she was not engaged in a special errand or mission incident to her employment at the time of the injury.[13] The fact that she was reporting for overtime work does not exclude her from the going and coming rule.

At the time of appellant's August 13, 2005 injury, she had not yet reported to work. The Board finds that her injury occurred while appellant was going to her employment in an ordinary and usual way which was an ordinary, nonemployment hazard of the journey to work itself, which is shared by all travelers.[14] Even though the street was a means of access to the employing establishment, this does not alter the public nature of the street or render it part of the employing establishment's premises. There is nothing in the facts of this case which brings appellant's injury within any of the exceptions to the general premises rule.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury on August 13, 2005 in the performance of duty.

[12] *Jimmie Brooks, supra* note 6.

[13] *Joan K. Phillips, supra* note 10.

[14] *Jimmie Brooks, supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 23, 2005 be affirmed.

Issued: July 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board