United States Department of Labor
Employees' Compensation Appeals Board

MARY HOFFMAN, Appellant **and** **DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Renton, WA, Employer**	)	**Docket No. 06-933** **Issued: July 25, 2006**

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 21, 2006, which affirmed as modified the Office's December 12, 2005 decision. That decision found that appellant did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on October 12, 2005.

FACTUAL HISTORY

On October 18, 2005 appellant, then a 50-year-old air traffic control specialist filed, a traumatic injury claim alleging that on October 12, 2005 she slipped and fell on the wet marble floor, on the fifth level terminal floor of the Denver International Airport. She alleged that she sustained injuries to her left shoulder, left side stomach muscle and her hip. Appellant stopped

work on October 18, 2005. The employing establishment alleged that the injury occurred before duty when she was en route to work.

By letter dated October 18, 2005, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days to submit the requested information.

In a letter dated November 4, 2005, the Office advised appellant and the employing establishment that additional factual evidence was needed. In particular, the Office informed appellant that continuation of pay would not be paid if the injury occurred off the employing establishment's premises.

In a November 28, 2005 response, appellant alleged that on the date of the injury she was in the Denver International Airport and was approaching security which she was required to pass through in order to get to her job in the control tower. She alleged that her foot slipped on an unknown substance on the floor and she fell, landing on her left side and front (stomach). Appellant indicated that she extended her left arm to protect herself from the fall, and used it to cushion her head from the impact and alleged that she felt her shoulder crunch and pop at the moment of impact. Furthermore, she alleged that she was prohibited from driving through the airport and parking at the tower. Appellant explained that she was required to park in a designated parking lot under the bridge to the east terminal parking lot. She referred to photographs of the parking lots, which she enclosed. Appellant alleged that she was required to walk from the parking lot through the terminal to the security clearance checkpoint and pass through security, prior to taking the train to Concourse C where the tower was located. She explained that she worked flextime, which allowed her to arrive a half hour before her assigned shift, or 5:30 a.m. Appellant explained that it was a 15-minute commute from the parking lot to the tower.

In a November 29, 2005 letter, appellant's representative alleged that her injury fell within the premises exception to the going and coming rule.

On December 9, 2005 the employing establishment controverted the claim on the basis that appellant was injured off the premises. The employing establishment alleged that the airport terminal was open to the public 45 minutes prior to her assigned shift, while walking on a wet marble floor and that the special hazard condition did not apply. The employing establishment also informed the Office that "the route claimant used is the generally accepted route to worksite." Responding to the Office's request for information regarding an alternate route to the and from the traffic tower, the employing establishment answered, "no."

By decision dated December 12, 2005, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office found that the evidence was sufficient to show that the claimed event occurred as alleged. However, the Office found that there was no medical evidence supporting that the accepted employment incident caused a diagnosed condition.

Appellant's representative requested reconsideration on December 16, 2005. In support of her request, appellant submitted an October 14, 2005 magnetic resonance imaging (MRI) scan

of the left shoulder, read by Dr. James Piko, a Board-certified diagnostic radiologist, and which revealed a distal tear of the supraspinatous tendon, inferior axillary capsular sprain, posterior lesion, joint effusion and subdeltoid /subacromial bursal fluid.

The Office also received an October 12, 2005 emergency room report which contained a history of injury including that appellant slipped and fell, an x-ray related to treatment of appellant's shoulder and several reports dating from October 14 to November 1, 2005 from Dr. Lawrence Varner, Board-certified in family medicine, who diagnosed left shoulder instability and pertaining to treatment for her left shoulder condition.

By letter dated January 4, 2006, the Office requested that the employing establishment respond to appellant's request for reconsideration.

In a January 18, 2005 response, the employing establishment continued to controvert the claim. The employing establishment alleged that air traffic control specialists "must pass through security in the City and County owned airport terminal, which is open to the public, prior to boarding the airport train to their worksite at the tower."

By letter dated January 26, 2006, the Office provided a copy of the employing establishment's response to appellant's representative. In a February 8, 2006 response, appellant's representative alleged that the walkway was part of the premises, as access was restricted and controlled by the employing establishment.

By decision dated February 21, 2006, the Office modified its December 12, 2005 decision. The Office found that appellant provided sufficient evidence to support that she sustained an injury on October 12, 2005 and the medical evidence supported a medical condition as a result of a specific work incident on October 12, 2005. However, the Office found that appellant did not sustain an injury in the performance of duty, because her injury occurred off agency premises in a public area and, therefore, was an off premises injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

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. 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.[5]

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 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.[6]

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.[7] 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.[8]

The Board has recognized, as a general rule, 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.[9] Such injuries are merely the ordinary, nonemployment hazards of the journey itself which are shared by all travelers.[10] There are recognized exceptions which are dependent upon the particular facts

---

[5] *See* 5 U.S.C. § 8102(a).

[6] *Id.*

[7] *Linda Williams*, 52 ECAB 300 (2001).

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

[9] *Jon Louis Van Alstine*, 56 ECAB ___ (Docket No. 03-1600, issued November 1, 2004).

[10] *Melvin Silver*, 45 ECAB 677, 682 (1994).

relative to each claim. The exception pertinent to this claim is whether the proximity rule as recognized by the United States Supreme Court in *Cudahy Packing Co. v. Parramoe*[11] applies. That case stands for the proposition that, under special circumstances, the industrial premises are constructively extended to those hazardous conditions which are proximate to the premises and may, therefore, be considered as hazards of the employment. In *Cudahy Packing*, the employee sustained injury on his way to work while on a road which was the only means of access to the industrial premises.[12]

ANALYSIS

Applying the premises principles to the present case, the Board finds that appellant's injury sustained on October 12, 2005 occurred within the performance of duty. The Office's finding that the airport terminal was not a part of the premises of the employing establishment because it was not owned or operated by the employing establishment, is erroneous. Such a conclusion belies the principal behind the premises rule.

Appellant alleged that her injury occurred at 5:15 a.m. as she approached the security area on October 12, 2005, which was 45 minutes prior to her shift. She noted that she could arrive at 5:30 a.m. due to flextime, and advised that it took 15 minutes to get from the designated employing establishment parking lot to the traffic tower. Appellant alleged that her foot slipped on an unknown substance on the floor as she approached the security area. The employing establishment confirmed that there was no other route by which appellant could arrive at the traffic tower, and that she was required to pass through this point. Thus, the employing establishment permitted and contemplated its use by its employees. The employing establishment contended that the security area should not be considered to be the premises of the employing establishment because it was also used by the general public. Such reasoning is unsound as this was the only way that appellant could get to her duty station. It is uncontroverted that, in order to reach appellant's duty station, the traffic tower, she was required to pass through security in order to reach her destination. Under these circumstances, the Board finds that the security area upon which appellant was injured has such proximity and relation as to be in practical effect a part of the employer's premises.[13]

An employee going to or coming from work is covered under workers' compensation while on the premises of the employer, so long as the interval before or after her shift is reasonable and appellant is engaging in preparatory or incidental acts. What constitutes a reasonable interval depends not only upon the length of time involved, but also on the circumstances occasioning the interval and the nature of the employment activity.[14] The evidence establishes that appellant was on her way to sign in for her morning shift when she was

---

[11] 263 U.S. 418 (1923).

[12] *Id.*

[13] *Cemeish E. Williams*, 57 ECAB ___ (Docket No. 06-274, issued March 16, 2006); *Idalaine L. Hollins-Williamson,* 55 ECAB ___ (Docket No. 04-1147, issued August 23, 2004).

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

injured at approximately 5:15 a.m. Appellant alleged that it took approximately 15 minutes to get to the traffic tower, from the designated parking lot, which would have allowed her to check in at 5:30 a.m. The Board finds that, when the injury occurred, appellant was on the premises for a reasonable length of time before her specific working hours in preparation for her shift to begin. There is no evidence of record indicating that appellant was engaged in any activity other than preparing herself for her shift, as she approached the security area. The fact that she arrived 15 minutes prior to her scheduled shift would reasonably allow appellant time to sign in, put away her belongings and start her shift on time, thereby, providing the employing establishment some substantial benefit from the activity involved.[15] The Board finds, therefore, that appellant's injury occurred during the course of her employment.

The Board notes that the Office did not fully consider whether the medical evidence established that an injury occurred that was causally related to this employment incident. The Board will remand the case for review of the medical records and appropriate development and findings with regard to this aspect of the claim.

CONCLUSION

The Board finds that appellant was on the premises of the employing establishment at the time of the October 12, 2005 injury and that the injury occurred during the course of appellant's federal employment. The case is remanded for further development with regard to the medical evidence, to be followed by a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2006 and December 12, 2005 decisions of the Office of Workers' Compensation Programs are reversed, and this case is remanded for further consideration consistent with this opinion.

Issued: July 25, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[15] *Id.*