United States Department of Labor
Employees' Compensation Appeals Board

BETTY BUFFORD, Appellant	)	
and	)	**Docket No. 06-1015**
	)	**Issued: July 26, 2006**
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, Philadelphia, PA, Employer	)	

Appearances:
Betty Bufford, 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

JURISDICTION

On March 27, 2006 appellant filed a timely appeal of the March 16, 2006 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. 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 appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On January 23, 2006 appellant, then a 58-year-old housing specialist, filed a traumatic injury claim alleging that she slipped and fell in the lobby of the employing establishment on her way to work at 7:40 a.m. on January 18, 2006 injuring her foot and "under body." In a January 27, 2006 official supervisor's report, Judith Axler stated that appellant's regular work hours were 7:00 a.m. to 3:30 p.m.

In a January 19, 2006 supervisor's report, Malinda Roberts indicated that appellant had reported that she slipped and fell on a marble floor on the mezzanine on the north level of the Wanamaker Building in the area between the escalator and the security desk. She then allegedly hobbled to her work area on the 12th floor. An ambulance was called and appellant was taken to Thomas Jefferson University Hospital. The report indicated that she experienced a severe sprain of her right foot and bruising on her right side around the rib cage area. The report also reflected that there had been heavy rain on January 18, 2006, and that the accident occurred as a result of a wet marble floor in the lobby area.

A January 18, 2006 incident report identified Cynthia Robinson as a witness to the alleged injury. Ms. Robinson stated that, although she did not see appellant fall, she heard a "splat" and observed appellant lying face down on the floor near the elevator and the security desk. Appellant said that "her side was hurting" when Ms. Robinson helped her to her feet. Ms. Robinson noted that there were no mats on the floor at the time appellant fell.

A January 18, 2006 commercial general liability report reflected that, at 7:44 a.m. on that date, having come in from the rain, appellant fell about 20 feet south of the north console on the mezzanine level of the building in which she worked. Allied Security officer Lael Newsome indicated that he did not see her fall but "heard the noise."

By letter dated February 13, 2006, the Office informed appellant that the information submitted was insufficient to establish her claim. The Office asked her to submit within 30 days detailed information regarding the fact of her alleged injury and a narrative medical report with a firm diagnosis and a rationalized opinion as to the causal relationship between her diagnosed condition and the alleged injury.

Appellant submitted a report dated February 6, 2006 from Dr. Marna R. Sternbach, Board-certified in the area of family medicine, who stated that appellant fell on January 18, 2006, injuring her right foot and ribs. She indicated that appellant had significant pain and limitation of movement due to the trauma. In a February 1, 2006 note, Dr. Sternbach indicated that appellant was unable to work from February 1 through 13, 2006.

On February 13, 2006 the Office submitted a list of questions to the employing establishment. In an undated, unsigned response, the employing establishment indicated that the building was "leased"; that the agency was not responsible for the maintenance of the property; that appellant worked in the building at the time of the incident; that appellant, who worked on a flexible schedule, was arriving to work at the time of the accident and that the fall occurred outside of the government leased space in a public area.

In a February 21, 2006 report, Dr. Sternbach stated that appellant fell on January 18, 2006, hitting her chest and abdomen and twisting her right ankle. She further indicated that although she "had the wind knocked out of her," there was no evidence of a fracture.

Appellant submitted documents from Thomas Jefferson University Hospital, including an emergency room report dated January 18, 2006, bearing an illegible signature, reflecting that she

was seen on that date for injuries relating to the alleged employment injury and discharge instructions.

By decision dated March 16, 2006, the Office denied appellant's claim, finding that the evidence failed to establish that the alleged injury occurred in the performance of duty. The Office determined that the injury did not occur on the premises of the employing establishment, in that the lobby where the fall took place was privately owned.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against each and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of an employee/employer relation.[1] 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 Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law, of arising out of and in the course of employment.[2] In addressing this issue, the Board has stated that in the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment, or the risk is incidental to the employment or to the conditions under which the employment is performed.[3]

Under the Federal Employees' Compensation Act,[4] 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 workers' compensation agencies. One such exception almost universally recognized is the premises rule: an employee going to or coming from work is covered under workmen's compensation while on the premises of the employer. This exception includes a reasonable interval before and after official working hours while the employee is on the premises engaging in preparatory or incidental acts.[5] What constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and nature of the

[1] *Bruce A. Henderson*, 39 ECAB 692 (1988); *Minnie M. Huebner*, 2 ECAB 20 (1948).

[2] *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

[3] *Barbara D. Heavener*, 53 ECAB 142 (2001); *Angela J. Burgess*, 53 ECAB 568 (2002).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty, Industrial Premises*, Chapter 2.804.4a. (August 1992).

employment activity. The mere fact that an injury occurs on an industrial premises following a reasonable interval after working hours is not sufficient to bring the injury within the performance of duty. The employee must also show that the injury resulted from some risk incidental to the employment and that the employing establishment received some substantial benefit from the activity involved.[6]

The premises of the employer, as that term is used in workers' compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent on the status or extent of legal title. 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, "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]

ANALYSIS

The Board finds that this case is not in posture for decision. The Board finds that appellant's injury sustained on January 18, 2006 occurred on the premises of the employing establishment. The Office's finding that the mezzanine area where appellant fell was not a part of the premises because it was not owned or operated by the employing establishment, is erroneous. Such a conclusion belies the principal behind the premises rule.

Appellant had fixed hours of work from 7:00 a.m. to 3:30 p.m. and was injured on her way to work at approximately 7:45 a.m., when she fell on a wet floor near the elevator on the mezzanine. The area in which the injury occurred was located on the same premises as her place of employment. Thus, the employing establishment permitted and contemplated its use by its employees. Moreover, the mezzanine on which she fell was a path used by appellant to get to her workstation. The employing establishment contended that the mezzanine should not be considered to be on the premises of the employing establishment because it was also used by the general public. Such reasoning is unsound. It is uncontroverted that appellant's duty station was on the 12th floor, in the same building, and that she was required to take the elevator to reach her destination. Under these circumstances, the Board finds that the mezzanine on which appellant was injured had such proximity and relation as to be in practical effect a part of the employer's premises.[8]

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

[7] *Denise A. Curry*, 51 ECAB 158 (1999); *Thomas P. White*, 37 ECAB 728 (1986).

[8] *See Cemeish E. Williams*, 57 ECAB ___ (Docket No. 06-274, issued March 16, 2006) (where the Board found that the escalator used by appellant to reach her duty station was on the premises of the employing establishment, even though it was also used by the general public). *See also Idalaine L. Hollins-Williamson*, 55 ECAB ___ (Docket No. 04-1147, issued August 23, 2004); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971). *Cf. Christine Lawrence*, 36 ECAB 422, 424 (1985) (where the Board found that appellant was not entitled to compensation benefits for an injury sustained when she slipped on the employing establishment lobby floor because at the time of the injury appellant was on annual leave and had reported to the employing establishment for the purpose of informing her supervisor that she would be unable to work due to residuals of a prior work injury).

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 on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employment activity.[9] The evidence establishes that appellant was on her way to work when she was injured at approximately 7:45 a.m. The record reflects that appellant's regular work hours were from 7:00 a.m. to 3:30 p.m., but that she worked a flexible schedule. Therefore, when she arrived for duty at approximately 7:45 a.m., she was within the timeframe of her scheduled shift. The Board finds that when the injury occurred, appellant was on the premises at a reasonable time before commencing her shift. There is no evidence of record indicating that appellant was engaged in any activity other than preparing herself for her shift when she fell. The Board finds, therefore, that appellant's injury occurred on the premises of the employing establishment.

The Board finds that the Office improperly concluded that appellant's injury did not occur on the premises of the employing establishment. This case must be remanded to the Office for further development of the medical evidence.

CONCLUSION

The Board finds that appellant was on the premises of the employing establishment at the time of the January 18, 2006 injury. The Board further finds that this case is not in posture for a decision, as the Office did not address whether appellant submitted sufficient medical evidence to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2006 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further development in accordance with this decision.

Issued: July 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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