United States Department of Labor
Employees' Compensation Appeals Board

CEMEISH E. WILLIAMS, Appellant	)	
and	)	**Docket No. 06-274**
	)	**Issued: March 16, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Romulus, MI, Employer	)	

Appearances:
Cemeish E. Williams, 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 November 14, 2005 appellant filed a timely appeal of the January 6 and October 3, 2005 merit decisions of the Office of Workers' Compensation Programs, which rescinded acceptance of her claim.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 the Office met its burden of proof to rescind acceptance of appellant's claim for compensation for an injury sustained on December 3, 2004 on the grounds that she was not in the performance of duty at the time of the injury.

FACTUAL HISTORY

On December 3, 2004 appellant, then a 48-year-old security screener, filed a traumatic injury claim alleging that on that date she twisted her left ankle when she fell backwards on an airport escalator on her way to work. She claimed that the incident occurred approximately

15 minutes prior to her start of duty. The record reflects her work shift was 12:00 p.m. to 8:30 p.m. In a December 3, 2004 incident report, appellant indicated that she had entered the west escalator after leaving the restroom and was in the process of putting on her uniform tie, when she reached for her bag and fell backwards.

Appellant submitted an emergency room report dated December 6, 2004 bearing an illegible signature, reflecting that she was seen on that date for a fractured ankle.

In a letter dated December 17, 2004, the Office informed appellant that the information of record was insufficient to establish her claim and advised her as to the medical and factual information required. She was given 30 days to submit the requested information.

The record contains an incident report dated December 3, 2004, from Officer Kris Meyers, reflecting that appellant fell to the bottom of an escalator and twisted her ankle on that date.

In statements dated December 21, 2004, coworkers Ginger Carpenter and LaToya Bell indicated that appellant fell down an escalator inside the airport terminal while reporting to work for her afternoon shift.

A radiological report dated December 3, 2004, reflected that appellant sustained a fractured ankle.

In a report dated December 21, 2004, Jerry Gioulette stated that he had been informed that appellant was injured by falling down stairs while in the process of signing in.

In a report dated December 10, 2004, Dr. Marc J. Milia, a treating physician, related the history of injury as reported by appellant and indicated that x-rays revealed a nondisplaced lateral malleolus fracture.

On January 3, 2005 the Office accepted appellant's claim for left ankle fracture.

In a December 29, 2004 supervisor's report, a human resource specialist, C. Adams, contended that the injury was nonwork related because it occurred before her shift. The report reflected that appellant had reported the injury at approximately 11:30 a.m., 30 minutes before her shift began. In a letter dated December 30, 2004, the employing establishment controverted appellant's claim, stating that appellant reported the injury 30 minutes before duty and that the injury had, therefore, occurred outside of working hours. The employing establishment also stated that the injury occurred on the Wayne County Metropolitan Airport Authority premises and that the escalator was not owned or operated by the employing establishment, but rather was a path for appellant to get to her checkpoint to report for assigned duties. The employing establishment further argued that appellant had the options of using an elevator or stairs to report to her workstation.

The record contains an employee interaction profile reflecting that at 4:00 p.m. on December 3, 2004 appellant presented to the human resource representative on crutches, having hurt her ankle while fixing her tie on an escalator in the Mac terminal about 30 to 45 minutes before her shift.

The record contains a report of a January 6, 2005 conference call between the Office case manager and Eric Weaver of the employing establishment. Mr. Weaver indicated that the employing establishment did not own or maintain the escalator on which appellant's injury occurred.

In a report of a telephone call dated January 4, 2005, the case manager reported that appellant stated that, at the time of her injury, she was approximately 30 to 60 feet from her duty station.

By decision dated January 6, 2005, the Office rescinded acceptance of appellant's claim, on the grounds that she had failed to establish that she was injured on the premises of the employing establishment. The Office found that the injury did not occur on the premises as the escalator was not controlled by the employing establishment and was not solely for the use of federal employees nor owned or operated by the Federal Government.

On January 20, 2005 appellant requested an oral hearing.

Appellant submitted a medical report from Steven M. Wyles, PA-C, dated April 30, 2005. The report reflects that appellant sustained a sprained ankle on that date while walking down a stairwell, when her left leg felt numb and "gave out." The report reflects that appellant fell down two or three steps on her left hip and hit her left arm. The record contains numerous therapy reports related to the April 30, 2005 alleged incident.

Appellant submitted a form dated September 3, 2003 reflecting interim uniformed employees' appearance responsibilities and a July 6, 2005 form providing supplemental regulations to the employing establishment's policy on uniformed employees' appearance and responsibilities.

At the July 12, 2005 hearing, appellant's representative argued that the determining factor was whether the escalator was monitored and/or walked across as part of appellant's normal duties, rather than whether it was owned or maintained by the employing establishment. The representative contended that none of the property upon which screeners work was owned or maintained by the employing establishment. In this case, the representative argued, the escalator is five feet from one of the duty stations.

Appellant testified that her regular working hours were from 12:00 p.m. until 8:30 p.m. and that she was required to be in full uniform and providing security whenever she was at the airport. She stated that the escalator was the only way to get to her work site from the bus. However, when questioned by the hearing representative about the possibility of using the stairs or elevator, she indicated that she could have used the stairs and was not certain where the elevator was. She testified that on the day of the injury, having arrived fully dressed in her work uniform from the employee lot on the "employee-only" bus, she entered the terminal on the bottom level and went up the escalator to her work site.

By decision dated October 3, 2005, an Office hearing representative affirmed the January 6, 2005 decision denying her traumatic injury claim. The hearing representative found that the escalator was maintained by the airport and that the hazard to which appellant was exposed was shared by the public.

LEGAL PRECEDENT

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, to set aside or modify a prior decision and issue a new decision.[1] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[2] It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation.[3]

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 his employment; liability does not attach merely upon the existence of an employee/employer relation.[4] 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 rising out of and in the course of employment.[5] In addressing this issue the Board has stated 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.[6]

Under the Act,[7] 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 workmen's compensation agencies. One such exception almost universally recognized is the premises rule: an employee

[1] *Eli Jacobs*, 32 ECAB 1147 (1981).

[2] *Shelby J. Rycroft*, 44 ECAB 795 (1993); *Compare Lorna R. Strong*, 45 ECAB 470 (1994).

[3] *Shelly D. Duncan*, 54 ECAB 367 (2003).

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

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

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

[7] 5 U.S.C. §§ 8101-8193.

going to or coming from work is covered under workers' 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.[8] 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 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.[9]

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.[10]

ANALYSIS

Applying the premises principles to the present case, the Board finds that appellant's injury sustained on December 3, 2004 occurred within the performance of duty. The Office's finding that the escalator 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 had fixed hours of work from 12:00 p.m. to 8:30 p.m. and was injured when she fell backwards on an airport escalator on her way to work at 11:45 a.m. The escalator on which the injury occurred was located in the same terminal, on the same premises, as her place of employment. Thus, the employing establishment permitted and contemplated its use by its employees. Moreover, the escalator on which she fell was a path used by appellant to get to her workstation, which was located approximately 40 feet from the top of the escalator. The employing establishment contended that the escalator should not be considered to be on the premises of the employing establishment because it was also used by the general public and appellant could have used the stairs or an elevator to reach her work site instead of the escalator. Such reasoning is unsound. Accepting the argument of the employing establishment, none of the routes chosen by appellant to reach her duty station would be "on-premises." It is uncontroverted that appellant's duty station was near the top of the escalator, in the same

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

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

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

terminal building and that she was required to take either the stairs, elevator or escalator to reach her destination. Under these circumstances, the Board finds that the escalator on which appellant was injured had "such proximity and relation as to be in practical effect a part of the employer's premises."[11]

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.[12] The evidence establishes that appellant was on her way to sign in for her afternoon shift when she was injured at approximately 11:45 a.m. Appellant testified that she was adjusting her uniform tie and reaching for her bag when the injury occurred on the escalator. The Board finds that when the injury occurred, appellant was on the premises for a reasonable time before her specific working hours in preparation for her shift. There is no evidence of record indicating that appellant was engaged in any activity other than preparing herself for her afternoon shift as she approached the sign-in desk. The fact that she arrived for duty 15 or 30 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.[13] The Board finds, therefore, that appellant's injury occurred during the course of her employment.

In the instant case, once the Office accepted appellant's claim for left ankle fracture, it had the burden of justifying termination or modification of compensation.[14] By decision dated January 6, 2005, the Office rescinded acceptance of and denied appellant's claim, on the grounds that she had failed to establish that she was injured on the premises of the employing establishment. The Board finds that the Office failed to meet its burden of justifying termination of appellant's compensation and erroneously rescinded acceptance of appellant's claim.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to rescind acceptance of appellant's claim. The Board further finds that appellant was on the premises of the employing establishment at the time of the December 3, 2004 injury and that the injury occurred during the course of appellant's federal employment.

[11] *Idalaine L. Hollins-Williamson*, 55 ECAB ___ (Docket No. 04-1147, issued August 23, 2004); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

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

[13] *Id*.

[14] *Shelly D. Duncan*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the October 3 and January 6, 2005 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: March 16, 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