

September 10, 2003 at 12:15 p.m.¹ She claimed that she sustained a broken left foot when she tripped stepping off a curb while returning to the office from lunch. In reply to the Office's April 9, 2004 request for further information, appellant stated that she worked in a building leased by the government, that there were no lunch facilities on the property, that the injury occurred one block from her office and that it occurred on her way to get lunch before the start of a meeting scheduled at her normal lunch time.

By decision dated September 9, 2004, the Office found that appellant was not injured in the performance of duty, as the September 10, 2003 incident occurred off the employing establishment's premises during her lunch break. Appellant requested a review of the written record, contending that her injury occurred in the course of her official duties as she was still on office time and merely went to get lunch for a working lunch meeting she had scheduled. By decision dated February 15, 2005, an Office hearing representative found that injuries sustained off-premises going to or returning from lunch break were generally not compensable, and that it was irrelevant that she was going to get lunch to return to a scheduled lunch meeting. The scheduling of the lunch meeting and decision to leave the premises beforehand to get lunch was a matter of her own discretion, rather than a requirement of her employment.

LEGAL PRECEDENT

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming from lunch, are not compensable as they do not arise out of and in the course of employment. When an employee has a definite place and time for work and the time for work does not include the lunch period, the trip away from and back to the premises for the purposes of getting lunch is indistinguishable in principle from the trip at the beginning and end of the workday and is governed by the same rules and exceptions.² One of these exceptions is the showing of a substantial employer benefit or an employer requirement. The injury must be shown to have resulted from some risk incidental to the employment to establish that it arose out of the employment.³

The fact that there are no lunch facilities on the premises does not bring the lunch excursion within the performance of duty.⁴ The fact that no deduction is made from the employee's salary for the time he or she engages in the questioned activity does not, by itself, bring the activity within the performance of duty.⁵

¹ The employing establishment indicated appellant's regular work hours were from 8:00 a.m. to 4:30 p.m.

² *Cheryl Bowman*, 51 ECAB 519 (2000); A. Larson, *The Law of Workers' Compensation*, § 13.05 (2004).

³ *Timothy K. Burns*, 44 ECAB 125 (1992) (employee's presence before his official working hours was not shown to further the employer's business).

⁴ *Thelma Davis*, 34 ECAB 1676 (1983).

⁵ *Mary Keszler*, 38 ECAB 735 (1987).

ANALYSIS

Appellant's September 10, 2003 injury occurred off the employing establishment's premises while she was going to get lunch. Her regular working hours are 8:00 a.m. to 4:30 p.m., and the injury occurred at 12:30 p.m., which indicates it was during the time allotted for her lunch break. Appellant contends that she was still on office time, but even if this is so, this does not afford coverage under the Federal Employees' Compensation Act. Her other contention is that she was going for lunch for a lunch meeting she had scheduled. Any benefit to the employer, however, would inure only during the lunch meeting, not during her going for lunch. What appellant essentially has done is shift and shorten her lunch break, but this does not make the risk involved in traversing the public streets incidental to her employment.

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on September 10, 2003.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 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