United States Department of Labor
Employee's Compensation Appeals Board

C.V., Appellant	)	
	)	**Docket No. 06-1488**
and	)	**Issued: November 16, 2006**
	)	
TRANSPORTATION SECURITY ADMINISTRATION, GREENVILLE-SPARTANBURG AIRPORT, Greer, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal of the March 3, 2006 merit decision of the Office of Workers' Compensation Programs which found that he did not sustain an injury in the performance of duty on January 15, 2003. 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 his burden of proof in establishing that he sustained an injury in the performance of duty on January 15, 2003.

FACTUAL HISTORY

On January 25, 2003 appellant, then a 72-year-old airport screener, filed a traumatic injury claim alleging that on January 15, 2003 he tripped on a dog leash while leaving his home. He fell down steps injuring his low back, head and neck. The incident occurred at 3:40 a.m. Appellant's

regularly scheduled hours were from 4:45 a.m. to 1:30 p.m. His supervisor checked a box on the claim form to indicate that he was not considered to be in the performance of duty when the injury occurred. Appellant stopped work on January 15, 2003.

The employing establishment submitted a statement from Deborah K. White, human resource specialist, indicating that appellant was injured at home prior to reporting for duty. Appellant reported that he tripped on a dog leash and fell down steps at his home when getting ready to come to work.

By letter dated February 18, 2003, the Office advised appellant of the factual and medical evidence needed to establish his claim.

The Office held a telephone conference on February 19, 2003 with Scott White and Janetta Gross of the employing establishment to discuss the circumstances surrounding appellant's injury and to determine if the employing establishment assigned a dog to appellant as part of his employment duties. Mr. White indicated that appellant was not assigned a dog for work purposes. Appellant reported that he tripped at home prior to leaving his residence or getting into his car to go to the employing establishment. Appellant was assigned to the Asheville Regional Airport as a main duty station and on the day in question he was to report to a temporary work location at the Greenville-Spartanburg International Airport. He was approved up to two and a half hours of overtime, round trip, each day to report to the assigned locations. Appellant reported that the injury occurred at 3:40 a.m. but wrote on his time card that he started work at 3:30 a.m. The employing establishment asserted that his duty status began when he got into his car to drive to the assigned work location.

Appellant submitted emergency room treatment notes dated January 15, 2003 noting that he reported that he was leaving for work and tripped over a dog leash and fell down steps landing on concrete. In a report dated January 24, 2003, Dr. Frank M. Brown, a Board-certified orthopedic surgeon, stated that appellant presented with back pain. Appellant reported that on January 15, 2003 he volunteered to work in the Greenville-Spartanburg International Airport and advised that, when he went out the door to his home, his feet became entangled in a dog leash on his porch and he fell down three cement steps striking his head and losing consciousness. Dr. Brown indicated that appellant was subsequently treated at the emergency room. Appellant's history was significant for a laminectomy at L4-5 which was performed in 1960. On February 10, 2003 Dr. Brown noted that appellant was treated in follow-up for an acute flare-up of back pain and left leg radicular pain as a result of a fall which occurred at his doorstep while on his way to work on January 15, 2003. In a statement dated February 24, 2003, appellant noted that he fell at approximately 3:38 a.m. and indicated that his pay started at 3:30 a.m. He was paid portal to portal until 14:30. Appellant noted that the emergency medical staff received the telephone call reporting his fall at 3:44 a.m.

In a March 3, 2003 statement, appellant advised that he and his wife moved into a new home on January 13, 2003 and the morning of January 15, 2003 was the first morning in which he left for work from the new house. At approximately 3:33 a.m., he left the house and proceeded down the steps to go to work. Appellant became entangled in a leash and stumbled to the side

walk where he fell backward and hit his head and back. He asserted that he was being paid when he was injured and it should be considered "on the job."

In a March 20, 2003 decision, the Office denied appellant's claim on the grounds that he had not established that he was injured while in the performance of duty.

In a letter dated April 17, 2003, appellant requested a hearing before an Office hearing representative. The hearing was held on November 18, 2003. Appellant testified that his hours at work were from 3:30 a.m. to 2:45 p.m. He was on temporary duty at the Greenville-Spartanburg International Airport and was paid 1 hour and 15 minutes in the morning and 1 hour and 15 minutes in the evening for his commute to and from work. Appellant advised that he was paid for transportation expenses per mile for 68 miles each way. On January 15, 2003 appellant stepped off his porch and became tangled in a leash. He stumbled on the second step and fell to the ground. Appellant advised that on January 15, 2003 he was paid beginning at 3:30 a.m.

In a January 15, 2004 decision, an Office hearing representative found that appellant had not established that he was in the performance of duty at the time of the injury on January 15, 2003. The hearing representative found that his journey to work did not begin until appellant entered his vehicle to drive to work.

In a letter dated November 15, 2005, appellant requested reconsideration. He indicated that on January 15, 2003 the weather was cold outside and he warmed up his car and drove it from the rear of the house to the side entrance and then reentered his residence. Appellant asserted that he then exited his home and got in his car to go to work and believed he was in the performance of duty. He submitted statements dated February 14, November 1 and 15, 2005 and asserted that he was in the performance of duty on January 15, 2003 when he fell and injured himself.

In a decision dated March 3, 2006, the Office denied modification of the January 15, 2004 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for the payment of compensation benefits 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" in the Act has been

[1] 5 U.S.C. § 8102(a).

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."[2]

In addressing this issue, the Board has stated:

> "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 or her master's business;
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> (2) at a place where he or she may reasonably be expected to be in connection with the employment; and
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> (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[3]

The Board has stated as a general rule that off-premises injuries sustained by employees having fixed hours and place 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 but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[4] Due primarily to the myriad factual situations presented by individual cases over the years, certain exceptions to the general rule have developed where the hazards of the travel may fairly be considered a hazard of the employment. The Board has held, "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 firemen; and (4) where the employee uses the highway to do something incidental to her employment with the knowledge and approval of the employer."[5]

ANALYSIS

In this case, appellant had fixed hours of work from 4:45 a.m. to 1:30 p.m. He was injured at 3:40 a.m. as he was exiting his residence on his way to enter his private motor vehicle and drive to the Greenville-Spartanburg International Airport. Appellant did not fall on the premises of the employing establishment on January 15, 2003, rather the record supports that the injury occurred at his residence. On that day his feet became entangled in a dog leash on a porch and he fell down cement steps onto a sidewalk striking his head. The Board notes that appellant provided two versions of events. In his reconsideration request, appellant indicated that he warmed up his car and drove it from the rear of the house to a side entrance and reentered his residence. When he

[2] *Bernard D. Blum*, 1 ECAB 1 (1947).

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

[4] *Robert F. Hart*, 36 ECAB 186, 191 (1984).

[5] *Joan K. Phillips*, 54 ECAB 172 (2002); *see also Janet Rorrer*, 47 ECAB 764, 768 (1996).

subsequently exited his home, he tripped and fell down the steps. Appellant acknowledged in both versions of events, that he was injured while he was leaving his home on the way to his automobile on January 15, 2003.

The record reveals that the injury occurred on January 15, 2003 when appellant was off-premises, prior to beginning his journey to work. Appellant was assigned to the Asheville Regional Airport as a main duty station and, on the day in question, he was on a detail assignment to the Greenville-Spartanburg International Airport. Mr. White stated that appellant was approved for up to two and a half hours of overtime, round trip, each day to report to the assigned locations. Although appellant advised that the injury occurred at 3:40 a.m. and his time card reflected that he started work at 3:30 a.m., it was the employing establishment's contention that he did not begin work until he got into his car and started to drive to his assigned location.

The evidence establishes that, at the time of the injury on January 15, 2003, appellant was not on duty and was off the premises of the employing establishment. There is no indication that he was engaged in any employment duties or any task incidental to his employment. Rather, appellant was at his home walking to his automobile. The Board notes that he did not establish that he was injured on the premises of the employing establishment.[6] In view of this, the general going and coming rule would apply unless it is established that one of the exceptions to the general rule applies to the circumstances in this case.

Under the facts of this case, it also cannot be said that appellant's injury would fall within any of the exceptions to the general rule regarding off-premises injuries, which occur while an employee is going to or coming from work. There was no evidence that he was injured while on an emergency call, while he was in contracted for transportation or while appellant was on the highway as an incident of employment. The evidence also does not show that there any special inconvenience, hazard or urgency of travel that would bring it within coverage of the Act.[7] Appellant was not in the performance of duty when injured.

Appellant has alleged that his injury should be compensable because he was preparing for his employment-related automobile trip to a temporary work site at the time the injury occurred. Preparation for work which occurs at home and prior to work hours is not generally compensable pursuant to the Act.[8] As noted, appellant's injury occurred at home, not on the premises of the employing establishment in preparation for work. Whether or not he moved his car prior to leaving for work, there is no dispute that he was at his residence at the time of the injury. The Board has not extended the course of employment to include activities performed at home or in preparation for travel to a temporary work site. In this case, preparation for travel would include walking down appellant's residential steps to reach his automobile and also warming up his

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

[7] *See Phyllis A. Sjoberg*, 57 ECAB ___ (Docket No. 06-114, issued February 8, 2006).

[8] *Robert W. Walulis*, 51 ECAB 122 (1999) (where the Board found that appellant was not considered in the course of employment when he injured his back moving luggage in preparation for a work-related trip the next day); *Dwight D. Henderson*, 46 ECAB 441 (1995).

vehicle and pulling the car in front of his home for a departure at a later time. The Office, therefore, properly found that his injury was not sustained in the performance of duty.

Appellant asserts that he was reimbursed mileage for the 136 miles round trip from his home to the airport and, therefore, the injury occurred within the performance of duty. However, the injury occurred prior to the commencement of his travel to work. Therefore, appellant would not qualify for the exception when an employer contracts to and furnishes transportation to and from work. He further asserts that he was paid wages for 15 minutes beginning at 3:30 a.m. on January 15, 2003. However, this payment does not by itself establish that appellant was within the performance of duty at the time of the fall.[9] Mr. White noted that appellant began work at the time he got into his car to start driving to the airport regardless of what time he entered on his time card that he started working. The record establishes that it was the employing establishment's intent to reimburse appellant for the time he spent driving to and from the airport not for the time he spent in preparation for the journey.

For these reasons, appellant has not shown that his injury arose out of and in the course of employment. Therefore, he did not meet his burden of proof to establish that he sustained an injury in the performance of duty on January 15, 2003.

CONCLUSION

The Board finds that appellant's injury of January 15, 2003 was not sustained while in the performance of duty.

[9] *Cf., Subhashini R. Prasad,* 56 ECAB ___ (Docket No. 03-1086, issued February 11, 2005) (the fact that no deduction is made from an employee's salary for the time he or she engages in a certain activity does not, by itself, constitute that activity as being incidental to employment).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board