# United States Department of Labor
# Employees' Compensation Appeals Board

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| **M.S., Appellant** | ) | |
| **and** | ) | **Docket No. 06-1242** |
| | ) | **Issued: September 7, 2006** |
| **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY AGENCY, Duluth, MN, Employer** | ) | |

*Appearances:*
*Stephanie M. Balmer, 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
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On May 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 15, 2005 and January 30, 2006 merit decisions denying her claim that she sustained an employment injury on March 15, 2005. 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 to establish that she sustained an injury in the performance of duty on March 15, 2005.

### *FACTUAL HISTORY*

On March 15, 2005 appellant, then a 31-year-old transportation security specialist, filed a traumatic injury claim alleging that she sustained neck, left arm, left shoulder and back injuries when she exited her vehicle at the Chisholm-Hibbing Municipal Airport at 5:20 a.m. on that date and slipped and fell on ice in the parking lot. Appellant's supervisor, William Wagner, indicated

that her regular work hours started at 5:30 a.m. and that her fall occurred in a parking lot that was owned and maintained by the Hibbing Airport authority. Appellant stopped work on March 24, 2005.

In a report dated March 15, 2005, an attending physician noted that appellant reported "slipped on the ice and sort of caught herself in the seat belt, but kind of landed on her bottom with the back of her head." The physician diagnosed cervical strain with possible left radiculopathy and contusion with possible ligamentous injury of the left knee.

On June 14, 2005 the employing establishment advised the Office that the parking lot where appellant fell was owned and operated by the City of Hibbing.

By decision dated June 14, 2005, the Office found that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 15, 2005. It found that the alleged injury occurred off the employing establishment premises and that none of the exceptions to the off-premises rule applied in the present case.

In a letter dated August 4, 2005, appellant indicated that the parking lot where she fell was for employees of the employing establishment and Mesaba Airlines and suggested that she was required by the employing establishment to park there. She asserted that the only way to get to her office door was to walk to the right of the area where she parked. To get to the airport from the employing establishment office she had to walk around the airport building to the front where the passengers check in.[1] Appellant asserted that all employing establishment employees were told to report to work 10 to 15 minutes before the scheduled start time, were considered to be "on the job" during this time despite not being paid and were required to "keep a vigilant eye open for anything out of the ordinary and to be of assistance to passengers at all times." She alleged that her fall should be covered because she was engaging in such activities at the time of her fall on March 15, 2005.[2]

By decision dated January 30, 2006, the Office affirmed its June 14, 2005 decision.

## ***LEGAL PRECEDENT***

The Federal Employees' Compensation Act[3] provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[4] In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.[5] The phrase "while

[1] Appellant indicated that she was submitting two photographs of the parking area, but these photographs do not appear in the record.

[2] Appellant also submitted additional medical evidence in support of her claim.

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8102(a).

[5] *Julian C. Tucker*, 38 ECAB 271, 272 (1986).

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."[6] The phrase "course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. In addressing this issue, the Board has stated the following:

> "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; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[7]

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, 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.[8] 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.[9] Exceptions to the general rule have been made in order to protect activities that are so closely related to the employment itself as to be incidental thereto[10] or which are in the nature of necessary personal comfort or ministration.[11]

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[6] *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[7] *Mary Keszler*, 38 ECAB 735, 739 (1987). This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury. *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[8] *Mary Keszler supra* note 7 at 739, 740.

[9] *Donna K. Schuler*, 38 ECAB 273, 274 (1986).

[10] The Board has stated that these exceptions have developed where the hazards of the travel may fairly be considered a hazard of the employment and that they are dependent upon the particular facts and related 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 his employment, with the knowledge and approval of the employer." *Betty R. Rutherford*, 40 ECAB 496, 498-99; *Lillie J. Wiley*, 6 ECAB 500, 502 (1954).

[11] *See, e.g., Harris Cohen*, 8 ECAB 457 (1954) (accident occurred while the employee was obtaining coffee); *Abraham Katz*, 6 ECAB 218, 218-19 (1953) (accident occurring while the employee was on the way to the lavatory).

Regarding what constitutes the "premises" of an employing establishment, the Board stated:

> "The term 'premises' as it is generally used in workmen's 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.'"[12]

The Board has determined that under special circumstances the employment premises are constructively extended to hazardous conditions which are proximately located to the premises and therefore may be considered as hazards of the employing establishment.[13] The main consideration in applying the rule is whether the conditions giving rise to the injury are causally connected to the employment.[14]

## ***ANALYSIS***

Appellant alleged that she sustained an employment injury when she fell in a parking lot while exiting her vehicle on March 15, 2005. The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on that date.

Appellant's claimed injury occurred off the premises of her employing establishment during her trip to work. The evidence reveals that the parking lot where appellant fell was not owned or operated by the employing establishment, but was owned and operated by the Hibbing Airport Authority and the City of Hibbing. Appellant has presented no credible evidence to show that her claimed injury occurred on the premises of the employing establishment. Although the definition of the employment premises is not solely dependent on the status or extent of legal title or control, appellant has not established any relationship of the injury site to her employment. There is no indication that the employing establishment controlled or maintained the parking lot, nor did the employing establishment have exclusive use of the parking lot as the evidence reveals that employees of at least one airline also used the lot. Appellant suggested that the employing establishment directed her to park in the lot, but she did not provide any evidence to support this assertion.[15]

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[12] *Wilmar Lewis Prescott*, 22 ECAB 318, 321 (1971). The Board has also stated: "The 'premises' of the employer, as that term is used in workmen's compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of legal title." *Dollie J. Braxton*, 37 ECAB 186, 188-89 (1985).

[13] *Sallie B. Wynecoff*, 39 ECAB 186, 188-89 (1987). A. Larson, *The Law of Workmen's Compensation* §§ 15.10-15.15, 15.20, 15.30, 15.40-15.45 (1994).

[14] *See Sallie B. Wynecoff*, *supra* note 13.

[15] Appellant suggested that she was required to walk through the lot to get to her workplace, but even if this assertion were proven it would not show that the parking lot was part of the employing establishment premises.

Appellant has not established that any of the exceptions to the general rule regarding off-premises injuries are applicable. As noted above, appellant was off the clock and on her way to work when the alleged injury occurred.[16] She has not shown that she was performing work incidental to her work duties at the time of the alleged injury. Appellant asserted that all employing establishment employees were told to report to work 10 to 15 minutes before the scheduled start time, were considered to be "on the job" during this time despite not being paid and were required to "keep a vigilant eye open for anything out of the ordinary and to be of assistance to passengers at all times." However, she did not provide any evidence to support these conditions nor did she adequately explain how these alleged requirements were of sufficient consequence to be considered incidental to her work duties.

The evidence indicates that appellant's claimed injury occurred away from her place of employment while she was engaged in nonemployment activities and represented a nonemployment hazard, which was shared by the general public. Therefore, appellant has failed to show that the claimed injury was sustained on March 15, 2005 in the performance of duty, because she has failed to establish that it arose out of and in the course of employment.

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 15, 2005.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' January 30, 2006 and June 14, 2005 decisions are affirmed.

Issued: September 7, 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

[16] The injury occurred at 5:20 a.m. and appellant's regular workday started at 5:30 a.m.