United States Department of Labor
Employees' Compensation Appeals Board

S.V., Appellant	)	
and	)	**Docket No. 07-880**
	)	**Issued: August 16, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Battle Creek, MI, Employer	)	

Appearances:
Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 3, 2007 which denied her claim for a traumatic injury. 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 in establishing that she sustained a traumatic injury in the performance of duty on January 11, 2005.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In a March 8, 2006 decision, the Board found that appellant failed to establish that she sustained an injury in the performance of duty, because she was off duty as she was on her way to work and was not performing any

[1] Docket No. 05-1954 (issued March 8, 2006).

function for the employing establishment. The Board also found that the parking lot where appellant fell had no relationship to the employing establishment. The facts and history contained in the prior appeal are incorporated by reference.

The facts and history germane to the present issue include a memorandum of telephone call dated April 27, 2005 in which the Office contacted Pat Haase, appellant's supervisor, who confirmed that the employing establishment did not own or maintain the parking lot where appellant fell. They also include a July 21, 2005 response, from Larry Gruetier, the clinic manager, who indicated that the parking lot was available to all who chose to use it. There were no assigned spaces, no authorized security patrols, no cost to employees to use the lot, no restrictions as to who could use the lot and that there was also parking on the street. Additionally, in paper dated August 1, 2005, Shelly Hendryx, a human resources specialist, indicated that the building and parking lot were owned by Brant Construction and that the grounds and parking lot were maintained by an entity known as the Lawn Ranger, which contracted with Brant Corporation.

By letter dated November 24, 2006, appellant's representative requested reconsideration. Counsel alleged that the Office and the Board failed to consider the allegation that a coworker fell in the same parking lot on November 17, 2004. He referred to her File No. 09-2052780 and alleged that the coworker's claim was approved. Counsel alleged that the facts were the same as appellant's, including that the injury occurred in the same parking lot at or near the time of the accident involving appellant. He also alleged that the Office should not award benefits to one claimant and deny another when the facts were the same. Counsel alleged that he had new evidence which showed that the "employer lied" to the Office and in fact "controlled where employees could park in the parking lot." He enclosed minutes from a meeting dated June 16, 2006 and alleged that the employing establishment notified the employees as to where they were to park and willfully withheld this fact. Counsel also alleged that the parking lot was maintained by the same company since it was opened and that the rules and regulations for use of the parking lot had remained the same. He further alleged that the employing establishment provided false testimony when it indicated that they did not provide security. Counsel alleged that a security guard checked the premises throughout the day. He alleged that the employing establishment directed the employees to park in a certain area of the lot. Counsel also alleged that the employing establishment leased the lot and paid for the use of their employees. He requested an investigation and approval of the claim.

In a June 9, 2005 statement, Gayla J. Endahl, a medical support assistant, indicated that she was employed by the employing establishment and fell in the parking lot adjacent to the building while walking from her car. She alleged that the fall occurred just prior to her shift and that her claim was accepted by the Office.

The Office also received minutes from a June 16, 2006 meeting of the employing establishment. The employing establishment noted that "[employees] were reminded to park in the wooded area behind the sidewalk area, in the outside perimeters of the parking lot or in the "GRHV" parking lot next to the small pavilion. Parking spaces need to be available closer to the building for veterans who are disabled."

By decision dated January 3, 2007, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers compensation laws, namely, arising out of and in the course of employment. In the course of employment relates to the elements of time, place or circumstance. To arise in the course of employment, an injury must occur at a time when the employee may be reasonably said to be engaged in the master's appellant's business, at a place where she may reasonably be expected to be in connection with the employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[4] The employee must also establish an injury arising out of the employment. To arise out of employment the injury must have a casual connection to the employment, either by precipitation, aggravation or acceleration.[5] The Board has accepted the general rule of workers compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours or at lunch time are compensable.[6]

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, the 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] The term premises of the employer, as that term is used in workers' compensation law, are not necessarily coterminous with the property owned by the employer; the term may be broader or narrower depending more on the relationship of the property to the employment than on the status or extent of legal title.[8]

The factors which determine whether a parking lot used by employees may be considered a part of the employing establishment's premises include whether the employing establishment

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Id*.

[4] *Mona M. Tates*, 55 ECAB 128 (2003); *Timothy K. Burns*, 44 ECAB 125 (1992).

[5] *John B. Shutack*, 54 ECAB 336 (2003); *see also Bettina M. Graf*, 47 ECAB 687 (1996).

[6] *Diane Bensmiller*, 48 ECAB 675 (1997).

[7] *Linda Williams*, 52 ECAB 300 (2001).

[8] *See Dollie J. Braxton*, 37 ECAB 186 (1985); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot and whether other parking was available to the employees. Mere use of a parking facility, alone is not sufficient to bring the parking lot within the premises of the employing establishment. The premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer owned, maintained or controlled the parking facility, used the facility with the owner's special permission or provided parking for its employees.[9]

ANALYSIS

In the instant case, appellant has not established that the premises doctrine should be applied. The Board finds that she has failed to establish that she sustained an injury in the performance of duty as she was off duty, as appellant was on her way to work, as she was not performing any particular function of the employing establishment and as the parking lot where she fell had no specific relationship to the employing establishment. In particular, the Board has previously determined and continues to find that the parking lot in which appellant slipped was owned by Brant Construction, which contracted out the maintenance of the grounds and parking lot to lawn ranger and the employees who utilized the lot did not pay anything for its use. The employing establishment also confirmed that it did not maintain the lot, that there were no assigned parking spaces and that it did not police the lot to see that unauthorized cars were not parked in the facility.[10] The employing establishment also confirmed that anyone could park in the lot and that employees were also free to park elsewhere, including on the street.

Counsel requested reconsideration and submitted additional evidence to support the claim that her injury occurred on the premises of the employing establishment while she was on her way to work. He alleged that he had new evidence which showed that the "employer lied" to the Office and in fact "controlled where employees could park in the parking lot." Counsel also alleged that employees were directed to park in a certain area of the lot and that the employing establishment intentionally and willfully withheld this fact. In support of this allegation, he submitted the minutes from a June 16, 2006 meeting of the employing establishment. The minutes contained a notation which indicated that "[employees] were reminded to park in the wooded area behind the sidewalk area, in the outside perimeters of the parking lot or in the "GRHV" parking lot next to the small pavilion. Parking spaces need to be available closer to the building for veterans who are disabled." Counsel alleged that this supported that the employing establishment indeed controlled where the employees were allowed to park. However, the Board finds that these minutes do not support the allegation that the employing establishment "lied" to the Office or controlled where employees were to park. The Board finds that these minutes merely suggest preferred areas that the employees should consider when parking and also

[9] *Rosa M. Thomas Hunter*, 42 ECAB 500, 504 (1991); *Edythe Erdman*, 36 ECAB 597 (1985).

[10] *See Rosa M. Thomas-Hunter*, 42 ECAB 500, 504-05 (1991) (mere use of a parking facility, alone, is not sufficient to bring the parking lot within the premises of the employing establishment).

suggests that the employees should not park in spaces close to the building so that disabled veterans could utilize the spaces. It finds that the employees had numerous options for parking which included the wooded area behind the sidewalk area, and there was no requirement that appellant park in that particular lot. As noted above, the premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer owned, maintained or controlled the parking facility, used the facility with the owner's special permission or provided parking for its employees.[11] Appellant has not submitted evidence to bring the parking lot within the "premises" of the employing establishment.[12]

Counsel also alleged that the parking lot was maintained by the same company since it was opened and the rules and regulations for use of the parking lot had remained the same. The Board finds that this argument does not lend any support that the employing establishment had exclusive use of the parking lot, as the record confirms that the lot was owned by Brandt Construction and maintained by the Lawn Ranger. The Board finds that this argument is insufficient to bring the parking lot with the "premises" of the employing establishment.[13]

Additionally, appellant's representative alleged that the employing establishment provided false testimony when it indicated that the employing establishment did not provide security; however, the Board finds that appellant has not submitted any evidence to support this allegation. The employing establishment denied that its personnel policed the lot or provided security. While appellant's representative alleged that a security guard checked the premises throughout the day, he has not shown that the security guard was employed by the employing establishment or that they policed the lot to ensure that no one other than employees of the employing establishment used the lot. The evidence reflects that anyone could use the lot, including disabled veterans. Counsel also alleged that the employing establishment leased the lot and paid for the use of the lot for their employees. As noted above, the care and maintenance of the lot was contracted out to the Lawn Ranger. Additionally, the employing establishment confirmed that anyone could park in the lot, including disabled veterans and there were other options where individuals could park, including the wooded area behind the sidewalk or the "GRHV" parking lot next to the small pavilion. This argument is insufficient to bring the lot within the "premises" of the employing establishment.[14]

The Board finds that the additional evidence submitted by appellant does not establish that the employing establishment's premises extended to the parking lot.[15] Appellant has not shown that the parking lot in which she fell was used exclusively or principally by employees of

[11] *Rosa M. Thomas Hunter*, 42 ECAB 500, 504 (1991); *Edythe Erdman*, 36 ECAB 597 (1985).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] The premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer owned, maintained or controlled the parking facility, used the facility with the owner's special permission or provided this parking for its employees. *See Edythe Erdman*, 36 ECAB 597, 599 (1985

the employing establishment for the convenience of the employer.[16] Therefore, there was insufficient connection with the employing establishment or her duties and the exception regarding employing establishment parking lots does not directly apply.[17] Thus, appellant's injury is considered to be an ordinary, nonemployment hazard of the journey itself, shared by all travelers.[18] The ice was a hazard common to all travelers and was not a hazard related to her employment. Appellant, therefore, did not establish that she was injured on the premises of the employing establishment.[19]

The Board also finds that the special hazard exception to the premises rule also does not apply as the route to appellant's car that day was personal to her, depending upon which space she parked in and the ice hazard had no connection with her employment and as access to the parking lot had not been proven to be limited to employing establishment personnel.

Counsel also repeated his allegation that appellant's claim should be accepted because other similar claims had been accepted. In support of his argument, counsel included a statement and referenced the claim of a coworker under File No. 09-2052780, who indicated that her claim was accepted. However, the Board notes that it can only adjudicate the facts of the present case and it does not have jurisdiction to review the facts of another case, not specific to the case at hand. Furthermore, the Board notes that, if the Office committed an error in accepting a prior claim, it does not mandate that the present claim should be accepted.

CONCLUSION

Appellant has failed to establish that she sustained an injury in the performance of duty, as she was off duty, as appellant was on her way to work, as she was not performing any function for the employing establishment and as the parking lot where she fell had no specific relationship to the employing establishment.

[16] *Mary Keszler*, 38 ECAB 735 (1987).

[17] *Id.*

[18] *Shirley Borgos*, 31 ECAB 222 (1979).

[19] *See Mark Love*, 52 ECAB 490 (2001); *Conrad F. Vogel*, 47 ECAB 358 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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