United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 07-976**
	)	**Issued: August 23, 2007**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Fresno, CA, 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 February 27, 2007 appellant filed an appeal of the June 21, 2006 and January 9, 2007 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 has established that he sustained an injury on April 13, 2006 while in the performance of duty.

FACTUAL HISTORY

On April 18, 2006 appellant, a 57-year-old tax examiner technician, filed a traumatic injury claim alleging that on April 13, 2006 he fractured his right leg as he was placing his wheelchair in the back of his van at the end of his shift. He stated that his vehicle was parked in the employing establishment parking garage.

Reports dated April 19 and 25, 2006, from Dr. David Thompson, a treating physician, reflect that appellant suffered from chronic paraplegia at the time of the accident. He stated that appellant had fractured his right tibia and had undergone amputation of the lower right leg as a result of an April 13, 2006 fall in his employer's parking lot. On June 16, 2006 Dr. Shahzadk Jahromi, a treating physician, reported that appellant sustained a broken right leg when he fell in a parking garage while lifting a wheelchair into his truck on April 13, 2006. A field nurse report for the period May 11 through June 7, 2006 reflected that appellant was a paraplegic and had used his wheelchair at work for 20 years prior to the alleged incident.

In a June 19, 2006 telephone conference, Supervisor Melanie Woods of the employing establishment stated that appellant was on government property when the April 13, 2006 incident occurred; that the incident occurred directly after his shift ended (12:00 a.m. to 12:10 a.m.); that the parking garage and building were leased for and used solely by the employing establishment; that appellant had an assigned parking space to accommodate his handicap; and that the general public was not allowed to use the parking garage.

By decision dated June 21, 2006, the Office denied appellant's claim. The Office accepted that the incident occurred as alleged on the industrial premises that was "owned or under the control of the employing establishment and occurred within a reasonable time after the end of the tour of duty." However, the Office determined that the injury did not arise out of and in the course of the performance of appellant's duties as a federal employee, but rather, was caused solely by risks involved in putting his wheelchair into his truck.

In an April 14, 2006 report, Dr. Robin Datta, Board-certified in the fields of emergency and family medicine, stated that appellant sustained tibia and fibula fractures while loading his wheelchair into his vehicle in an employing establishment garage on April 13, 2006.

On September 18, 2006 appellant requested reconsideration of the Office's June 21, 2006 decision. He contended that his injury occurred in the performance of duty, as the garage in which the injury occurred was used exclusively by federal employees.

By decision dated January 9, 2007, the Office denied modification of its June 21, 2006 decision. The Office found that appellant's activity of loading his wheelchair into his vehicle did not further his master's business and that his injury did not result from a risk incidental to employment, but rather from a personal activity.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. 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.[1] The phrase "while 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

[1] *See* 5 U.S.C. § 8102(a).

employment. The phrase "course of employment" is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance.[2]

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

The Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours 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.[4] Given this rule, the Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable time while the employee is on the premises engaged in preparatory or incidental acts. However, presence at the employing establishment's premises during work hours or a reasonable period before or after a duty shift, is insufficient, in and of itself, to establish entitlement to benefits for compensability. The claimant must also establish the concomitant requirement of an injury arising out of the employment. This encompasses not only the work setting, but also the causal concept that some factor of the employment caused or contributed to the claimed injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show that substantial employer benefit is derived or an employment requirement gave rise to the injury.[5]

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities, unrelated to his or her employment. The Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was aimed at reaching some specific personal objective.[6]

ANALYSIS

In its January 9, 2007 decision, the Office found that appellant was not injured in the performance of duty on April 13, 2006, but rather, was engaged in a strictly personal activity that was a deviation from his regular employment activities. The Board finds that appellant's act of

[2] *See Annie L. Ivey*, 55 ECAB 480 (2004). *See also Alan G. Williams*, 52 ECAB 180 (2000).

[3] *Id*.

[4] *See James P. Schilling*, 54 ECAB 641 (2000); *see also Narbik A. Karamian*, 40 ECAB 617 (1989).

[5] *See Eileen R. Gibbons*, 52 ECAB 209 (2001). *See also Cheryl Bowman*, 51 ECAB 519 (2000); *Shirlean Sanders*, 50 ECAB 299 (1999); *Charles Crawford*, 40 ECAB 474 (1989).

[6] *Rebecca LeMaster*, 50 ECAB 254 (1999).

loading his wheelchair into his vehicle at the end of the workday was a reasonable and necessary activity connected to his employment and contemplated by the employing establishment. Therefore, appellant was engaged in an action incidental to the duties of his employment.

Appellant had fixed hours of work and was injured when he fell immediately following the end of his tour of duty. The parking garage in which the injury occurred was leased for and used solely by employees of the employing establishment. Appellant had an assigned parking space to accommodate his handicap and the general public was not allowed to use the parking garage. Thus, the employing establishment permitted and contemplated its use by its employees and particularly by appellant. Under these circumstances, the Board finds that the parking garage in which appellant was injured was a part of the employer's premises.[7]

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 his 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.[8] The evidence establishes that appellant was preparing to leave the employing establishment at the end of his shift when he was injured at approximately 12:10 a.m., while loading his wheelchair into his van. The Board finds that, when the injury occurred, appellant had been on the premises for a reasonable time after his specific working hours performing an act reasonably incidental to his employment. There is no evidence of record indicating that appellant was engaged in any activity other than preparing to leave the employing establishment and placing his wheelchair in his vehicle. He was at a place he was reasonably expected to be in connection with his employment. Further, appellant was engaged in an activity which may be characterized as reasonably incidental to the conditions of his employment.

In *Venicee Howell*,[9] the employee was injured immediately following her shift as she was walking to her supervisor's desk to obtain a "Bid sheet" in order to apply for a position advertised by the employing establishment. The Board found that she was engaged in an activity that was reasonably incidental to the conditions of her employment. The Board noted that, although the activity was not required by the employing establishment, it was connected with the work she was employed to perform. In the instant case, appellant's activity of loading his wheelchair into his personal vehicle was clearly not required by the employing establishment. However, as in *Howell,* it can be characterized as an activity reasonably incidental to his employment. As a result of his paraplegia, appellant used his wheelchair at work everyday for 20 years prior to the April 13, 2006 incident. The employing establishment provided him with an assigned parking space in order to accommodate his handicap. The evidence establishes that appellant required the use of his wheelchair in order to perform the duties of his job and that the employing establishment was aware of this requirement. Thus, the act of loading the wheelchair into his vehicle was not a deviation from his regular employment duties.

[7] *Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

[8] *Narbik A. Karamian, supra* note 4.

[9] 48 ECAB 414 (1997).

In *Howard M. Faverman*,[10] the employee sustained injuries on his way to the employee cafeteria when he crashed into a wall and fell to the floor 55 minutes before his shift began. Claimant stated that he routinely arrived early because he needed extra time to prepare for the daily activities. However, he did not identify any specific preparatory or incidental activity related to his employment that required him to be present 55 minutes before his tour of duty began. The Board found that claimant was not involved in any preparatory activity reasonably incidental to his employment activities on the morning of the claimed injury. Only as a matter of personal convenience did appellant choose to arrive at the employing establishment early. His act of walking to the employee cafeteria was a deviation from his regular employment duties. In contrast, in this case, appellant's act of placing his wheelchair in his van was not a matter of personal convenience or a deviation from his employment duties, but rather was a matter of necessity. In order for appellant, a wheelchair-bound paraplegic, to return home, he had no choice but to place his wheelchair in his van.

In *Kathryne Lyons*,[11] the employee fractured her right foot when she fell on employing establishment property, while engaged in a three-mile recreational walk 10 minutes prior to reporting to work. The Board found that she was not engaged in activities that could be characterized as reasonably incidental to the conditions of her employment, in that she had arrived at work early only as a matter of personal convenience and was engaged in a personal activity when injured. *Lyons* can be distinguished from the case at hand. In *Lyons*, the claimant engaged in personal exercise before her shift began, unbeknownst to the employing establishment. Further, there was no relationship whatsoever between the activity in which she was engaged and the duties of her employment. In this case, appellant's wheelchair was essential to his ability to perform the duties of his job. Therefore, placing his wheelchair into his van at the end of the day was as reasonably incidental to conditions of his employment as a doctor placing his medical bag into his car.

The Board finds that appellant was engaged in an action incidental to the duties of his employment and that he was in the performance of duty on April 13, 2006 at the time of the accepted incident.[12]

CONCLUSION

The Board finds that appellant was on the premises of the employing establishment at the time of the April 13, 2006 incident and that the incident occurred during the course of appellant's federal employment.

[10] 57 ECAB ___ (Docket No. 05-1496, issued October 19,2005).

[11] 49 ECAB 295 (1998).

[12] *See William Robidoux*, Docket No. 97-165 (issued December 3, 1998) (where claimant fell on employing establishment property while going to his vehicle to retrieve personal effects, the Board found that he was engaged in an activity incidental to his employment, because it was reasonable that he might leave personal effects in his car).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2007 and June 21, 2006 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: August 23, 2007
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