United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 07-596**
	)	**Issued: June 8, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Denton, TX, Employer	)	

Appearances:
Appellant, pro se
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 December 27, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' March 13 and August 25, 2006 merit decisions denying his claim for a traumatic injury and the November 16, 2006 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant has established that his September 17, 2005 injury was an incident of, and arose out of, his employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 19, 2005 appellant, a 50-year-old letter carrier, filed a claim for a left ankle sprain sustained on September 17, 2005, when he stepped down from a high sidewalk onto

the edge of a round cement stepping stone and twisted his ankle. He stated that the injury occurred between 5:30 p.m. and 6:00 p.m., immediately following his tour of duty. The injury occurred at the "northwest corner of the outside of the building." Noting that appellant's regular work hours were from 7:30 a.m. until 4:00 p.m., the employing establishment controverted appellant's claim, stating that the injury occurred off the clock, while he was crossing a public street on his way to the official employee parking lot, which was leased by the employing establishment.

By letter dated September 30, 2005, the Office informed appellant that the information submitted was insufficient to establish his claim. The Office provided appellant 30 days to submit medical evidence supporting his claim, and a response to the employing establishment's contention that appellant was "off the clock."

Appellant submitted duty status reports for the period September 19 through October 3, 2005 from Dr. Andrew Blankenau, a treating physician. The record contains follow-up physicians' notes from Minor Emergency of Denton for the period September 21 through October 24, 2005; September 19, 2005 reports of x-rays of appellant's left foot and ankle; an October 11, 2005 report of a magnetic resonance imaging (MRI) scan of the left ankle; a Texas workers' compensation status report dated November 7, 2005; and a September 26, 2005 prescription for physical therapy.

The employing establishment submitted an accident report dated September 21, 2005, reflecting that, at approximately 6:00 p.m., on September 17, 2005, appellant was "off the clock" and walking towards his vehicle, when he stepped down off the sidewalk onto the edge of a stepping stone and twisted his ankle. The report further states that appellant was on overtime status. A handwritten note on the face of the report indicates that "the accident occurred on a public street – *not* on postal premises."

By decision dated November 22, 2005, the Office denied appellant's claim. Stating that the injury had occurred on a public sidewalk approximately one and a half hours after his tour of duty ended, the Office found that appellant had failed to establish that he had sustained an injury in the performance of duty.

On December 5, 2005 appellant requested reconsideration. He submitted a map of the area in which the September 17, 2005 incident occurred. Notations on the map indicated that the site of injury was between the employing establishment building and the employee parking lot. Appellant stated that the accident occurred in the flowerbed behind the truck on the northwest corner of the employing establishment. He contended that employees have to walk across the street to reach the parking lot leased by the employing establishment. Appellant also submitted a copy of provisions and procedures regarding coverage for claims, issued by the National Association of Letter Carriers, as well as a September 17, 2005 time sheet.

On March 13, 2006 the Office denied modification of its previous decision. The Office found that the incident did not occur on the property of the employing establishment, and that appellant had failed to explain the fact that the injury occurred one and a half hours after his regular tour of duty ended.

On April 6, 2006 appellant again requested reconsideration. He stated that he was submitting a copy of Form 3996, which showed that he was on authorized overtime on September 17, 2005. No such form was included in the record. By decision dated May 25, 2006, the Office denied appellant's request for reconsideration, finding the evidence submitted insufficient to warrant merit review.

On June 7, 2006 appellant requested reconsideration. He submitted Form 3996 dated September 17, 2005, reflecting the authorization for two hours of overtime on the date of the employment incident. By letter dated July 18, 2006, the Office asked the employing establishment to explain whether appellant was on authorized overtime on the date in question. The Office also inquired as to whether the flowerbed identified by appellant as the location of the accident, was on the employing establishment's premises and, if so, who maintained the flowerbed.

In a July 27, 2006 memorandum to the Office, the employing establishment stated that appellant's tour ended at 5:49 p.m. on September 17, 2005. The employing establishment also indicated that, although the flowerbed was on the premises, appellant did not fall in the flowerbed, but rather in the public street, off the clock, on his way to his vehicle.

By decision dated August 25, 2006, the Office modified its March 13, 2006 decision to reflect that appellant worked overtime from 4:00 p.m. to 5:30 p.m. on September 17, 2005. However, the Office denied the claim, finding that the evidence failed to establish that he had sustained an injury in the performance of duty.

On October 25, 2006 appellant again requested reconsideration. He provided copies of September 19, 2005 reports of x-rays of the left foot and ankle, which had previously been reviewed by the Office. On November 16, 2006 the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[1] 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.[2] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[3] The Board has recognized 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

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8102(a).

[3] *Valerie C. Boward*, 50 ECAB 126 (1998).

of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[4]

The premises of the employer, as the term is used in workers' 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 the legal title. 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 "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.[5]

Underlying the proximity exception to the premises rule is the principle that course of employment should extend to an injury that occurred at a point where the employee was within the range of dangers associated with the employment.[6] The most common ground of extension is that the off-premises point at which the injury occurred lies on the only route or at least on the normal route, which employees must traverse to reach the plant, and that the special hazards of that route become the hazards of the employment.[7] Another such extension of the premises rule occurs when an employee must travel a public thoroughfare to traverse between two premises of the employer. As noted by A. Larson, in his work, *The Law of Workers' Compensation* § 13.04[4][a] compensation is generally awarded when an injury occurs as an employee travels along or across a public road between two portions of the employer's premises, whether coming and going, or pursuing active duties. Section 13.04[4][b] states "[M]ost courts … hold that an injury in a public street or other off-premises place between the plant and parking lot is in the course of employment, being on a necessary route between the two portions of the premises."

ANALYSIS -- ISSUE 1

Appellant's injury did not occur on the employing establishment's premises, but rather on the public sidewalk adjacent to the employing establishment.[8] There is no evidence of record indicating that the employing establishment owned or was responsible for the maintenance of the sidewalk or adjacent street. At the time of his injury, appellant had fixed hours and place of work, and was traveling from the employing establishment to the employee parking lot. Barring

[4] *See P.S.*, 57 ECAB ___ (Docket No. 06-114, February 8, 2006); *Gabe Brooks*, 51 ECAB 184 (1999).

[5] *See Denise A. Curry*, 51 ECAB 158 (1999).

[6] *See Linda D. Williams*, 52 ECAB 300 (2001); *Michael K. Gallagher*, 48 ECAB 610 (1997).

[7] *Id.*

[8] The Board notes that the evidence of record does not support appellant's claim that he fell in a flowerbed owned by the employing establishment.

an exception to the general rule, the injury was an ordinary, nonemployment hazard of the journey to work itself which is shared by all travelers.[9]

The Board now must evaluate whether the employment premises should be constructively expanded to include the sidewalk on which appellant's injury occurred. There is no dispute that the official employee parking lot, towards which appellant was walking when the injury occurred, was leased by the employing establishment for the benefit of the employees. The Board has held that a parking lot for the use of its employees may be considered part of the employment premises, where it has been established that the employer owned, maintained or controlled the parking facility, or provided the parking for its employees.[10] The Board finds that the employee lot in the instant case falls within the employing establishment's premises. The issue, then, becomes whether the path between the two separate portions of the employer's premises should also be considered part of the premises.

Appellant alleged that employees had to walk across the area where the accident occurred in order to reach the parking lot leased by the employing establishment. The map submitted by appellant supports his contention. The employing establishment did not provide any argument or evidence to contradict appellant's claim that he was required to travel over the location of the injury in order to reach the employee parking lot from the building in which he worked. The Board finds that appellant's injury, which occurred on a necessary route between two portions of the employing establishment's premises, albeit on a public sidewalk, arose in the course of his employment. This case must be set aside and remanded to the Office for consideration of such compensation or other benefits as he may show he is entitled to receive. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation benefits.[11]

CONCLUSION

The Board finds that appellant has established that his September 17, 2005 injury was an incident of, and arose out of, his employment.

[9] *Denise A. Curry*, *supra* note 5; *Jacqueline Nunnally-Dunford*, 36 ECAB 217 (1984).

[10] *Gladys W. Hansen*, 8 ECAB 603 (1956).

[11] In light of the Board's ruling on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the August 25 and March 13, 2006 decisions of the Office of Workers' Compensation Programs are set aside and remanded for action consistent with this decision.

Issued: June 8, 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