

stated that she “tripped and fell onto [her] knees and forearms on stairs by the corner of the building....” Her injuries included a swollen and badly bruised right knee, minor ankle bruises and strains to her back, neck, shoulders and right hip. Appellant was later diagnosed with right knee internal derangement, cervical, thoracic and lumbosacral sprains and aggravation of cervical and lumbar disc disease.

In a June 30, 2006 letter to the Office, Michael Rihn, appellant’s supervisor, stated that the May 30, 2006 incident did not occur on the employing establishment’s premises. On June 8, 2006 he accompanied appellant outside the building so that she could show him where she was injured. According to Mr. Rihn, appellant demonstrated how she tripped on the curb at Jessie Street and fell on the “low-lying steps at the entrance to the public concourse.” Just prior to the May 30, 2006 incident, appellant purchased food at Murphy’s Delicatessen on Jessie Street. She was headed back across Jessie Street to the employing establishment’s fourth floor break room when she fell. Mr. Rihn provided a San Francisco area street map and a hand-drawn diagram of where appellant fell in relation to the surrounding buildings.

In an August 14, 2006 decision, the Office denied appellant’s claim finding that her May 30, 2006 injury occurred off-premises and she was not in the performance of duty.

Appellant requested an oral hearing, which was held January 24, 2007. She argued that the location where she fell was part of the building complex where the Federal Government leased office space and, therefore, it should be considered as part of the employing establishment premises. In a brief prepared for the hearing representative, appellant indicated that her employer leased two entire floors and part of a third floor at 71 Stevenson Street. The property consisted of two buildings that shared a common roof, divided by a partially covered walkway with stairs at both ends. Appellant stated that she injured herself on the covered stairs at the south end of the walkway. She explained that she “stepped off the public alley, over the public curb and onto the privately owned stairs on the 71 Stevenson Street property.” Appellant stated that, “[w]hile stepping from the first stair to the second stair, [her] foot caught the edge of the second stair causing her to fall.” She explained that the stairs were used primarily by the building’s tenants and customers. Appellant also indicated that there was a brass plaque at the curb/first step that noted that pedestrians could come through only upon permission of the owner.² She argued that there was no evidence or basis upon which to believe that the stairs were publicly owned or controlled by either the city or county.

By decision dated April 4, 2007, the hearing representative affirmed the August 14, 2006 decision. The hearing representative found that appellant was injured on property that was not under the control of the Federal Government and that was accessible to the general public. The location where she fell could not “in any way be deemed a part of the employing establishment premises.” The hearing representative also found that there was no evidence demonstrating that the industrial premises should be extended to the exterior curb or stairs of the public plaza where the injury occurred.

² Appellant explained that the Jessie Street curb and the first step are merged creating an oversized first step, which caused her to misjudge her footing and catch her foot on the edge of the second step.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained "while in the performance of her duty."³ In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place when she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.⁴ For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.⁵

ANALYSIS

Appellant argues that her claim should be covered under the Act because the stairs she fell on are part of the building complex where her employer leased office space. The Office, however, did not consider the area where appellant fell to be part of the employing establishment's premises and, therefore, denied her claim. The record indicates that appellant fell on May 30, 2006 when she was returning to her office building after buying food for lunch. She was en route to the employing establishment's fourth floor break room when she stumbled and fell on some stairs outside her office building. These stairs led to a partially-covered pedestrian walkway that provided access to the building's side entrance.⁶ The walkway also served as a thoroughfare between Stevenson Street and Jessie Street. Appellant's supervisor described the area as a public concourse, but she characterized the stairs as privately owned. However, neither party provided evidence regarding ownership of the property where appellant fell on May 30, 2006. Based on the current record, the Board cannot provide a definitive answer to the question of whether appellant's fall occurred on or off the industrial premises.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷ Accordingly, the Office's decision will be set aside and the case remanded for further development of the record regarding the issue of whether the stairs where appellant fell on May 30, 2006 are part of the industrial premises. Following such further development, it shall issue a *de novo* decision.

³ 5 U.S.C. § 8102(a) (2000).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB __ (Docket No. 05-977, issued February 10, 2006).

⁵ *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

⁶ Appellant said she was 35 steps away from the building entrance when she fell.

⁷ *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: November 20, 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