United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 07-2352**
	)	**Issued: February 26, 2008**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Austin, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2007 appellant filed a timely appeal from February 8 and August 27, 2007 decisions of the Office of Workers' Compensation Programs' decision, denying her claim for an injury on December 12, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, 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 while in the performance of duty on December 12, 2006.

FACTUAL HISTORY

On December 16, 2006 appellant, then a 62-year-old revenue agent, filed a traumatic injury claim alleging that on December 12, 2006 she sustained a head injury when she was bitten

by a squirrel. At the time of the incident, 11:15 pm,[1] she was in a parking lot on her way to the employing establishment building.

On December 12, 2006 Dr. Robert D. Mills related that appellant was attacked by a squirrel two hours earlier. He diagnosed a squirrel bite to the head and administered the first of a series of rabies vaccinations.

The Office requested additional information from the employing establishment to establish whether appellant was injured while in the performance of duty on December 12, 2006. On February 1, 2007 Cindy Evans, an employing establishment representative, stated that appellant's building was leased and was part of a complex of four buildings. The parking lot was not controlled by, or for the exclusive use of, the employing establishment or its employees. The lot was open to the public, including visitors to the employing establishment and to the other buildings and employees of businesses in the complex of buildings. Employing establishment employees did not have assigned parking spaces in the parking lot.

By decision dated February 8, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on December 12, 2006 while in the performance of duty.

Appellant requested an oral hearing that was held on June 11, 2007.

In a March 27, 2007 statement, appellant advised that she was on her way to work when the December 12, 2006 incident occurred. She parked in a lot used by employing establishment employees. Tommie Pernell, appellant's supervisor, provided a statement in which he advised that the employing establishment leased office space in appellant's building. Each of the four buildings in the complex had "designated" parking spaces. He stated that the parking lot appellant used was also used by the public. Mr. Pernell advised that the employing establishment did not control the parking lot.

By decision dated August 27, 2007, an Office hearing representative affirmed the February 8, 2007 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,

[1] Appellant's normal work hours were 7:45 am to 4:30 pm. Her supervisor advised that December 12, 2006 was a flexiplace day for her. However, appellant was required to go to the employing establishment building that day to have her laptop computer upgraded.

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

"arising out of and in the course of employment."[4] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, 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. As to the phrase "in the course of employment," 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 employees are going to and from work, before or after work hours or at lunch time, are compensable.[5] The Board has stated, as a general rule, that off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work, 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.[6]

The employing establishment premises may include all the property owned by the employer.[7] However, even though an employer does not have ownership and control of the place where the injury occurred, the locale may nevertheless be considered part of the premises.[8] For example, a parking lot used by employees may be considered a part of the employing establishment premises when the employer contracted for the exclusive use of the facility or where specific parking spaces were assigned by the employer.[9] Other factors to be considered include whether the employer monitored the parking facility to prevent unauthorized use, whether the employer provided parking at no cost to the employee, whether the general public had access to the parking facility and whether there was alternate parking available to the employee.[10] Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the premises of the employing establishment.[11] 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.[12]

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Roma A. Mortenson-Kindschi*, 57 ECAB ___ (Docket No. 05-977, issued February 10, 2006).

[6] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

[7] *See Denise A. Curray*, 51 ECAB 158 (1999).

[8] *Id*.

[9] *Roma A. Mortenson-Kindschi, supra* note 5.

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

[11] *Id.*

[12] *Roma A. Mortenson-Kindschi, supra* note 5.

ANALYSIS

Appellant alleged that she sustained a work-related injury on December 12, 2006 when she was bitten by a squirrel as she walked from a parking lot to her building. The record does not establish that the incident occurred on the employing establishment premises.

The evidence of record shows that the parking lot where the December 12, 2006 incident occurred was not controlled by, or for the exclusive use of, the employing establishment or its employees. The lot was open to the general public, including visitors to the employing establishment, visitors to other buildings in the vicinity and employees of private businesses. Employing establishment employees did not have assigned parking spaces in the parking lot. There is no evidence that the employing establishment maintained the parking lot. For these reasons, it has not been shown that appellant was injured on the premises of the employing establishment.

The next question to be resolved is whether appellant's claimed injury occurred in the course of her employment despite the fact that it occurred off of the employing establishment premises. The Board has held that the industrial premises are constructively extended to hazardous conditions which are proximately located to the premises and may, therefore, be considered as hazards of the employing establishment. The main consideration in applying the rule is whether the conditions giving rise to the injury are causally connected to the employment.[13] Appellant was attacked by a squirrel as she walked from a parking lot to her building. The record does not support the application of an exception to the off-premises rule. The hazard encountered by appellant, an encounter with wildlife living near the parking lot, was a hazard that was faced by all those who used the parking lot. The conditions giving rise to the injury (a squirrel habitat near the parking facility) are not causally connected to appellant's employment. Appellant's injury is considered to be an ordinary, nonemployment hazard of the journey itself, shared by all travelers using the parking lot.

As appellant's injury occurred off the employing establishment premises while she was going to work, and because the record fails to support the application of an exception to the off-premises rule, the Board finds that the employee's injury did not arise out of and in the course of her federal employment. For the reasons stated above, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 12, 2006.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury while in the performance of duty on December 12, 2006.

[13] *Michael K. Gallagher*, 48 ECAB 610 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 27 and February 8, 2007 are affirmed.

Issued: February 26, 2008
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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