United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 08-334**
	)	**Issued: June 5, 2008**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, New York, NY, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 10, 2007 nonmerit decision denying her request for merit review. The last merit decision of record was the Office's May 15, 2006 decision denying her claim for an October 15, 2004 employment injury. Because more than one year has elapsed between the last merit decision and the filing of this appeal on November 13, 2007, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On October 28, 2004 appellant, then a 41-year-old auditor, filed a traumatic injury claim alleging that on October 15, 2004 she sustained injury to her right hand, left knee, neck and back when she fell on the stairs of the One Penn Plaza Building while leaving work. The claimed injury occurred at 7:30 p.m. after appellant had clocked out for the day. On the reverse of the form, appellant's supervisor stated, "The employee was injured on her way home from work. The injury occurred on the steps outside of the building. The building is not federally owned or maintained."

In a December 6, 2004 decision, the Office denied appellant's claim that she sustained an injury in the performance of duty on October 15, 2004. The Office found that the injury occurred off the employing establishment premises after work and that there was no evidence to support that there was any hazardous condition peculiar to appellant's place of employment that extended the premises to the stairs.

Appellant, through her attorney, argued that, although the stairs where she fell on October 15, 2004 were not owned or maintained by the employing establishment, her injury occurred in the performance of duty because an extension of the premises rule applied in her case. She argued that the stairs where she fell on October 15, 2004 were her only mode of egress from her workplace and therefore constituted a special hazard that became a hazard of her employment and brought her claim within the coverage of the Federal Employees' Compensation Act. Appellant submitted photocopies of photographs of the entrance to One Penn Plaza Building with notations indicating where she fell.[2]

In a May 15, 2006 decision, the Office affirmed its December 6, 2004 denial of appellant's claim. The Office found that the stairs on which appellant fell on October 15, 2004 did not have such proximity and relation to the employing establishment premises as to be in practical effect part of those premises and determined that her case did not fall within any of the exceptions to the premises rule. The Office stated, "The act of walking down steps is a hazard commonly faced by all who walk in a multilevel world. The possibility of falling down steps is a danger inherent to all who walk down steps. There is nothing 'special' about walking down steps: it is not a 'special hazard.'" The Office concluded that appellant's claimed injury occurred off the employing establishment premises at a time when she was not performing her work duties.

In a May 11, 2007 letter, appellant again argued that the stairs where she fell on October 15, 2004 constituted a special hazard that became a hazard of her employment and brought her claim within the coverage of the Act. She alleged that the stairs where she fell were slippery due to a heavy rainfall and that the area was dark because the rain clouds blocked the sun.[3] Appellant submitted a weather report from the internet which indicated that it rained about

[2] The photocopies are of poor quality and it is unclear when most of the photographs were taken.

[3] Appellant indicated that the sun had not yet set when she fell at 7:30 p.m. on October 15, 2004. She claimed that the lights were out on the front of the One Penn Plaza Building and the streetlamps facing the building. Appellant also argued that the accident site was not off-premises because it was "structurally and functionally a part of the building."

a quarter of an inch in Manhattan's Central Park on October 15, 2004.[4] She also submitted additional photocopies of photographs of the entrance to One Penn Plaza Building with notations indicating her claims of wet and dark conditions. The record contains a May 14, 2007 statement in which appellant's husband indicated that he came to her aid after she fell on October 15, 2004. He noted that rain and cloud cover had lowered visibility and that the area where appellant fell was wet and slippery.

In an August 10, 2007 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act[5] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[6] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[7] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[8] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[9]

ANALYSIS

Appellant alleged that on October 15, 2004 she sustained injury to her right hand, left knee, neck and back when she fell on the stairs of the One Penn Plaza Building while leaving work. She argued that the stairs where she fell were her only mode of egress from her workplace and therefore constituted a special hazard that became a hazard of her employment and brought her claim within the coverage of the Act. The Office denied appellant's claim finding that her claimed injury occurred off the employing establishment premises when she was not performing her work duties. It found that she had not established any exceptions to the premises rule,

[4] The lower reaches of Central Park are located about two dozen streets north of the One Penn Plaza Building.

[5] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b)(2).

[7] 20 C.F.R. § 10.607(a).

[8] 20 C.F.R. § 10.608(b).

[9] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

including that she had not established that the stairs where she fell constituted a special hazard extending the employing establishment premises to that area.[10]

In support of her timely May 2007 reconsideration request, appellant argued that the stairs where she fell on October 15, 2004 constituted a special hazard. She noted that the stairs constituted a special hazard because they were slippery due to a heavy rainfall and the fact that the area was darkened by rain clouds. However, this argument does not require reopening of appellant's case for merit review because it is not relevant to the main issue of the present case, *i.e.*, whether appellant has established that she sustained an injury in the performance of duty on October 15, 2004.[11] This argument is not relevant because it does not tend to provide any support for appellant's special hazards argument. The Board has generally held that conditions caused by weather, including rain, are not special hazards. Rather, they are dangers inherent to the commuting public.[12] Appellant submitted evidence meant to show that it was rainy and overcast in the area where she fell, but this evidence is irrelevant for the same reason as the above-described argument concerning special hazards.[13]

The Board finds that the Office properly denied her request for further review of the merits of its May 15, 2006 decision under section 8128(a) of the Act. The evidence and argument she submitted do not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[10] As to an employee having fixed hours and a fixed place of work, an injury occurring on the premises while the employee is going to and from work before or after working hours or at lunch time is compensable, but if the injury occurs off the premises, it is not compensable, subject to certain exceptions. Underlying some of these exceptions is the principle that course of employment should extend to any injury that occurred at a point where the employee was within the range of dangers associated with the employment. *Syed M. Jawaid*, 49 ECAB 627 (1998). 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 premises, and that therefore the special hazards of that route become the hazards of the employment. A. Larson, *The Law of Workers' Compensation* § 13.01(3) (2006). This exception contains two components. The first is the presence of a special hazard at the particular off-premises point. The second is the close association of the access route with the premises, so far as going and coming are concerned. *Id.* at § 13.01(3)(b).

[11] *See supra* note 9 and accompanying text.

[12] *See Syed M. Jawaid*, *supra* note 10.

[13] Appellant also argued that the accident site was not off-premises because it was "structurally and functionally a part of the building." However, this argument is not relevant because she did not provide legal precedent in support of her contention.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 10, 2007 decision is affirmed.

Issued: June 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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