

handcuffed her. The employing establishment asserted that the incident was not in the performance of duty as the officer restrained her because she caused a traffic accident then failed to obey his instructions. The employing establishment noted that appellant's scheduled start time was 5:30 p.m. Appellant asserted that she arrived early on December 13, 2006 as she needed to complete training, choose a schedule and read e-mails.

In a January 25, 2007 letter, the employing establishment stated that on December 13, 2006 appellant's vehicle struck the stopped patrol car of Officer Hamilton and Officer Jared Roark, a trainee. Appellant then proceeded without slowing or stopping. The officers got into their patrol car and pursued appellant to the parking lot. The officers then recognized her. Officer Hamilton twice ordered appellant to turn around and interlock her fingers behind her head, then forcibly took her to the ground and handcuffed her. Appellant was then told about the collisions and taken to the emergency room as she was diabetic. On December 14, 2006 she advised the employing establishment that she had a breakthrough seizure. Appellant had been on medication due to a seizure several years before. The employing establishment noted that the parking lot was on its premises and appellant "may arrive anywhere from 10 minutes to 1 hour before her scheduled work time" to attend to scheduling or other matters.

Appellant submitted medical evidence. In a December 20, 2006 report, Dr. Susan E. Hammon, an employing establishment physician, noted appellant's history of a seizure disorder, diabetes and hypertension. She related appellant's account of the December 13, 2006 events. Appellant's attending physician released her to work with no driving and no carrying a gun. Dr. Hammon noted work restrictions in follow-up reports. In a January 23, 2007 report, Dr. Adel Rizkallah, an attending osteopathic physician, noted a history of lumbar problems.¹ He stated that, according to appellant, the December 13, 2006 incident and "method of restraints ... exacerbated her back condition."

By decision dated February 1, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. It accepted the December 13, 2006 incident as work related but found the medical evidence insufficient to establish the incident caused an injury.

In a February 14, 2007 letter, appellant requested a review of the written record. She contended that she was kneeling down in compliance with Officer Hamilton's instructions when he slammed her to the concrete. Appellant submitted additional evidence.

In an April 13, 2007 report, Dr. Kathryn Mason, an attending Board-certified family practitioner, opined that a herniated L5-S1 disc "certainly could have been, and likely was, caused by being forcefully thrown to the ground."

In a May 29, 2007 letter, the employing establishment stated that the December 13, 2006 incident occurred on its premises at 5:14 p.m., 16 minutes before appellant's scheduled 5:30 p.m. start time.

¹ A January 29, 2004 magnetic resonance imaging scan showed mild diffuse lumbar spondylosis, a moderate disc extrusion at L3-4 and foraminal stenosis from L1 to L5.

By decision dated and finalized June 28, 2007, an Office hearing representative affirmed the February 1, 2007 decision. The hearing representative found that the December 13, 2006 incident was not in the performance of duty as appellant had not yet begun work. Also, as appellant failed to follow Officer Hamilton's instructions, the altercation became a personal dispute not considered within the performance of duty.

In a July 25, 2007 letter, appellant requested reconsideration, reiterating her account of events in several statements. She submitted additional evidence.

In a December 13, 2006 statement, Officer Hamilton stated that at 5:10 p.m. that day, a vehicle with no lights on struck his patrol car then kept traveling. He and Officer Roark pursued the vehicle in their patrol car. The vehicle then parked in the police department lot. The driver exited and faced toward Office Hamilton. He recognized appellant. Officer Hamilton then detained appellant, placed her in handcuffs and escorted her into the department.

In a December 13, 2006 statement, Officer Roark recalled that, while on duty with Officer Hamilton at 5:10 p.m. that day, he heard "screeching tires and crunching metal." He saw a vehicle that appeared out of control strike their patrol car, then continue on. The two officers pursued the vehicle to the police department parking lot and blocked it in. Appellant then exited the car. Officer Hamilton ordered her to turn around, then detained her.

In a December 14, 2006 statement, appellant described exiting her car and seeing Officer Roark "with his gun pointed at me. [Officer] Hamilton told [her] to get down, get down. He threw [appellant] to the ground and put his knee in [her] back and handcuffed [her]."

On January 25, 2007 appellant filed a complaint against Officers Hamilton and Roark for excessive and unnecessary force. In a March 28, 2007 letter, the employing establishment advised that an internal investigation failed to prove or disprove her allegations.

By decision dated September 26, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient. It found that the new evidence supported that the December 13, 2006 incident occurred while commuting due to a personal traffic dispute. The Office further found that appellant "did not follow instructions given by the police officer" and therefore "the assault occurred for private reasons."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

Section 8102(a) of the Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of her duty.⁵ This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, arising out of and in the course of employment.⁶ Whereas arising out of the employment addresses the causal connection between the employment and the injury, arising in the course of employment pertains to work connection as to time, place and activity.⁷

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 or from work, before or after working hours or at lunch time, are compensable.⁸ The Board has held that a parking lot used by employees may be considered part of the employing establishment's premises 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.⁹

ANALYSIS

Appellant asserted that she sustained a herniated lumbar disc in the performance of duty on December 13, 2006 when tackled and handcuffed by a coworker. The Office initially accepted the December 13, 2006 incident as work related. In subsequent decisions, it found it did not occur in the performance of duty. The evidence indicates that the incident occurred at the time, place and in the manner alleged. It must now be determined whether the incident occurred in the performance of duty.¹⁰

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 5 U.S.C. § 8102(a).

⁶ See *Bernard E. Blum*, 1 ECAB 1 (1947).

⁷ See *Robert J. Eglinton*, 40 ECAB 195 (1988).

⁸ *Narbik A. Karamian*, 40 ECAB 617, 618 (1989).

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ The Board notes that, in its June 28 and September 26, 2007 decisions, the Office included language implicating the affirmative defense of willful misconduct. However, to the extent that it is raising the affirmative defense of willful misconduct, it cannot do so when an Office hearing representative invokes the affirmative defense for the first time in his or her decision after an initial denial on another ground. *Gayle M. Petty*, 46 ECAB 996 (1995).

On December 13, 2006 appellant drove to the employing establishment's premises on her way to her designated parking lot. While on her way to the parking lot, she struck a vehicle then collided with the rear of a stopped patrol car. Appellant drove on without stopping. These collisions caused Officers Hamilton and Roark, employing establishment security officers, to pursue appellant's vehicle as she left the scene of an accident. When appellant exited her car, Officer Hamilton detained her, bringing her to the ground. Although she alleged that she had a seizure on December 13, 2006 which caused her to drive recklessly, neither officer saw signs of a seizure or other distress at the time of her detention.

The December 13, 2006 incident took place on the employing establishment's premises within a reasonable interval of appellant's schedule start time. However, appellant was not engaged in her employment duties or any tasks reasonably incidental thereto. The mere location of the altercation on the employing establishment's premises during work hours does not bring it within the performance of duty. The Board has held that arrests or altercations with police officers occurring on an employing establishment's premises are not within the performance of duty unless the claimant was engaged in performing his or her assigned duties.¹¹

The present case is similar to the circumstances in *Jeremiah Bowles*.¹² In *Bowles*, the claimant ran a stop sign on the employing establishment's premises on his way to report for duty. Employing establishment security officers detained him because of the traffic violation. The claimant became belligerent and was injured. The Board found that appellant was not injured in the performance of duty as there was no causal relationship between the altercation and the employment itself.¹³ In the present case, employing establishment security officers detained appellant after she caused two vehicular collisions and proceeded to drive on without stopping. The Board finds that these collisions were unrelated to appellant's employment. Appellant was not engaged in her federal duties or tasks incidental thereto at the time of the altercation. Accordingly, the Board finds that appellant was not in the performance of duty at the time she sustained a lumbar injury on December 13, 2006.¹⁴

CONCLUSION

The Board finds that appellant was not injured in the performance of duty on December 13, 2006.

¹¹ *Vincent A. Rosenquist*, 54 ECAB 166 (2002); *Alan G. Williams*, 52 ECAB 180 (2000).

¹² 38 ECAB 652 (1987).

¹³ *William Knauer*, Docket No. 93-763 (issued July 11, 1994); 38 ECAB 652 (1987) (the Board held that a claimant's injuries sustained in an investigation of an off-premises motor vehicle accident imported onto the employing establishment's premises was not work related as there was no nexus between the incident and the claimant's employment).

¹⁴ As the claimed injury was not work related the Board need not address the medical evidence in this case. *Margaret S. Kzrycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26, June 28 and February 1, 2007 are affirmed.

Issued: September 25, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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