

some air and was bitten by the rattlesnake. The record establishes that she was admitted to the hospital on the day of injury and treated for a rattlesnake bite to the right ankle.

In a letter dated July 7, 2009, the employing establishment related:

“[Appellant] teleworks in her job from her residence. That residence is in one of the several parks for which she works ... just east of Grand Canyon). [Appellant] lives there by choice -- she is not required to live there as a condition of her employment. We do have employees who are required to live in some parks (usually law enforcement or fire people), but her position does not require it. If we have extra housing, after accommodating the required occupants, we allow other employees to rent it at some approximation of market rate (though the market is pretty odd in a place like that).”

The employing establishment questioned whether she was covered by federal workers' compensation because she was not required to live in the park.¹

In an undated statement received July 14, 2009, appellant related that she worked an alternate work schedule with two alternative workplaces. One workplace was her residence in “government quarters owned and maintained by the [employing establishment].” Appellant also worked out of a visitor center and often walked between the two locations. Her official duty station was 100 miles away. Appellant was working at home at her residence on June 12, 2009 when she decided to take a lunch break. After lunch, she walked outside to check the weather and stepped onto the porch and down a step. When she stepped onto the patio she felt a sharp pain in her ankle. Appellant looked under the porch and saw a rattlesnake. She described her transportation to the hospital and subsequent medical treatment for the bite. Appellant related that her supervisor filed her traumatic injury claim and recommended seeking treatment from a physician who handled workers' compensation claims.

In a July 31, 2009 decision, the Office denied appellant's claim on the grounds that she did not sustain injury in the performance of duty. It found that she was injured on her lunch break while working at home rather than while performing her work duties. The Office noted that the personal comfort doctrine did not apply to employees on flexiplace. It also found that the premises doctrine did not apply as the property was under her control and she was not engaged in the actual performance of her work duties.

On appeal appellant contends that her employer benefited from her residing in the park and teleworking. Because she was onsite after work hours sometimes she would “end up responding to accidents and requests for assistance.” Appellant questioned the degree of her control over the premises given that the employer could require her to share the property with other employees. She stated:

“[W]here the residence is located, is an archeological park; the housing area and visitor center are part of an historic district. I have no direct control over or authority to make changes to the property or the premises. I cannot install a

¹ A February 10, 2006 telework agreement specified that appellant would work in half of a spare bedroom.

snake-proof fence, alter habitat to make it less inviting for snakes, acquire a pet that might deter snakes, or modify a deck to make it safer to enter and exit the house without getting bit by a snake.”

Appellant argued that working and living in a national park had special hazards. She stated, “I was injured due to a hazard encountered on my employer’s premises, at a time reasonably connected to work -- I had a reasonable reason for being where I was -- bringing me under the umbrella of coverage.” Appellant noted that the employing establishment initially informed her that her injury was work related and directed her to receive treatment from an Office provider rather than her personal physician.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act² (the Act) 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, 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.⁵ 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 telework or flexiplace arrangements, the Office has exercised its discretion under the Act to exclude the personal comfort doctrine from situations in which an employee is performing work at home.⁶ The Office’s procedure manual addresses off-premises injuries sustained by workers who perform service at home. It states:

“Ordinarily, the protection of the [Act] does not extend to the employee’s home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

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 *D.L.*, 58 ECAB 667 (2007).

⁶ FECA Bulletin No. 98-9 (issued June 5, 1998). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992).

for the employer. The official superior should be requested to submit a statement showing --

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
- (b) The particular work the employee was performing when injured; and
- (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion.”⁷

The Board has also recognized the Bunkhouse Rule, applicable to workers with fixed hours whose employment requires or mandates that they reside on a premises owned by their employer.⁸ As used in workers’ compensation law, the term premises is not synonymous with the term property, as it is not solely dependent on ownership. The Board has held that the premises of the employer are not necessarily coterminous with the property owned by the employer; it may be broader or narrower and is dependent more on the relationship of the property to the employment than on the status or extent of the legal title.⁹

ANALYSIS

There is no dispute that on June 12, 2009 appellant was bitten on the right ankle by a rattlesnake. She was working on that date at her residence, which she rented from the employing establishment, pursuant to a flexiplace agreement. Appellant related that she stopped work for lunch and stepped outside to check the air temperature. After she stepped onto the porch of her residence, a rattlesnake struck her twice on the right ankle. The issue is whether she was within the performance of duty at the time of the rattlesnake bite.

Appellant contends that her injury is compensable because she was injured while working at her residence under a telework agreement with her employer. For employees performing official duties at home, which are generally off the premises of the employing establishment, the Office has provided that employees directly engaged in the performance of their duties are covered under the Act.¹⁰ The personal comfort doctrine, however, does not extend to the premises of the employee and therefore an employee is not covered when he or she uses the bathroom, gets coffee or seeks fresh air.¹¹

⁷ *Id.*

⁸ *Robert J. Lima*, 55 ECAB 546 (2004).

⁹ *A.M.*, 58 ECAB 471 (2007); *Denise A. Curray*, 51 ECAB 158 (1999).

¹⁰ *See Mona M. Tates*, 55 ECAB 128 (2003); *Julietta M. Reynolds*, 50 ECAB 529 (1999).

¹¹ *Id.*

In *Mona M. Bates*,¹² the employee alleged injury while at home under a flexiplace agreement. She fell over a bed rail after her husband and a delivery person removed the mattress set from her bed and she attempted to clean. The Board found that she was not in the performance of duty when injured. It noted that the employer can exercise control of the work environment on the employing establishment premises and can maintain safety so as to reduce the likelihood of workplace injury. The employee's home, however, is not under the employer's control and is treated differently. In *John B. Shutack*,¹³ the employee twisted his low back while reaching over a cabinet to retrieve a file. The employer controverted the claim as he was on scheduled leave at the time of the injury. The Board found that the employee's flexiplace agreement allowed him to work at home Wednesday through Friday. At the time of injury, however, the employee was not scheduled to work but was on scheduled leave and not reasonably engaged in his employer's business.

In *Julietta M. Reynolds*,¹⁴ the employee was working at home on flexiplace when it became cold and the heat failed to come on. She was injured when she fell on the stairway coming up from the basement of her house after checking the furnace. The Board found that she was not injured in the performance of duty as the personal comfort doctrine did not apply to work at home under flexiplace. Therefore, the Office properly rescinded the acceptance of her claim. Having left her home workstation to repair the furnace, she removed herself from the course of her employment.

The 2006 telework agreement provided that appellant work from half of a spare bedroom. When she left that space to eat lunch and then walk outside for fresh air or to enjoy the scenery, she was no longer in the performance of duty under the agreement. Personal comfort is not applicable to the facts of this case. Her injury does not arise out of the course of her federal employment. Consequently, as appellant was not performing her regular duties, but was instead walking outside during her lunch break, she was not in the performance of duty under the telework agreement.

Appellant also contends that her employer benefited from her residing at the national monument, noting she would occasionally respond to accidents or requests for assistance. The record reflects that appellant's residence is owned by her employer and located on its premises. This aspect of her claim raises the premises concepts of the "on-call" employee and the Bunkhouse Rule pertaining to employees living on the premises but not on call. In his treatise on workers' compensation law, Professor Larson distinguishes between those employees required to live on the premises as a condition of their employment from those whose residence is permitted but not required.¹⁵ He notes: "When residence on premises is merely permitted, injuries resulting from such residence are not compensable under the broad doctrines built up around employees required to reside on the premises."¹⁶ The theory is that, when residence is

¹² *Supra* note 10.

¹³ 54 ECAB 336 (2003).

¹⁴ *Supra* note 10.

¹⁵ 2 A. Larson, *The Law of Workers' Compensation*, § 24.04 (2006).

¹⁶ *Id.*

mandatory, it is the constraints and obligations of the employment that subject the employee to the risk that injured him, while if the residence is optional, the employee is free to do as he pleases and there is no continuity of employment obligation during the time the employee is voluntarily at a place provided for his convenience by the employer.¹⁷

In this appeal, the evidence of record is insufficient to establish that appellant was required or compelled to live on the premises of the employer as a condition of her federal employment. Appellant's residence is located on the national monument grounds east of the Grand Canyon. She is not required to live there as any condition of her federal employment. Rather, she rented spare housing that became available after the required occupants were first housed and paid a market rental. There is no evidence that she resides on the premises as an "on-call" resident employee or as a caretaker of the government property.¹⁸ Rather, she is an employee having fixed hours of work from 7:30 a.m. to 5:00 p.m. Tuesday through Friday with every other Monday off under the telework agreement. The fact that she rented housing from her employer for her own convenience does not, of itself, establish compensability for the injury she sustained on the premises. Even in the case of an on-call employee, Larson notes: "a line must be drawn in these cases somewhere short of unlimited coverage of everything that happens on the premises."¹⁹ The Board has addressed such lines in prior cases.

In *Robert J. Lima*,²⁰ the employee fractured his left ankle while exiting the back door of his apartment building in Budapest, Hungary. The Office accepted the claim under the Bunkhouse Rule. The evidence established that his employer owned the apartment building and appellant was required to live in the housing facility provided by the government as a condition of his employment. The Board found that the value of the quarters provided to appellant was to be included in determining his pay rate for compensation purposes.²¹

In *Edmond B. Wagoner*,²² the employee fractured his right hand when he struck it against a wall in his apartment. The apartment was furnished by the government during his temporary-duty assignment from his regular employment. At the time of injury, he was having an argument with his wife. The Board affirmed the denial of the claim, finding that appellant's injury was not sustained during a reasonable use or occupancy of the premises. The fact that the injury occurred on the premises was merely fortuitous and not related to the quarters itself. The

¹⁷ *Id.*

¹⁸ *Id.* at § 24.02[1]. Under the Bunkhouse Rule, for "on-call" employees going and coming trips are generally covered as are personal comfort activities.

¹⁹ *Id.* at § 24.02[2].

²⁰ *Supra* note 8.

²¹ *Contrast Eleanor Abood*, 10 ECAB 466 (1959). The employee was overcome by, while bathing in her apartment, either escaping gas or lack of oxygen due to a defective heater. The Board noted that the employer granted a quarters' allowance as it had no government owned or rented facilities available. The record did not establish how the quarters' allowance was to be spent or that the employer retained direct control in the selection of the employee's living quarters. The Bunkhouse Rule was found not applicable to the facts of the case.

²² 39 ECAB 758 (1988).

employee was not engaged in any activity essential to or reasonably incidental to his employment or detail assignment.

In *Northon Edmund Joseph*,²³ the employee was a fireman in the Panama Canal Zone on his tour of duty. He sustained injury to his hand while examining a leak in the radiator of his car. The Board affirmed the denial of his claim for compensation, finding that he was engaged in a personal activity when on call. While appellant was authorized to engage in personal comfort activities while at the fire station and not actually working, repairing his automobile did not fall within this category of activity and was not related to the duties he was hired to perform.²⁴

Appellant's departure from the telework space in her home as agreed with her employer, for lunch, removed her from compensability under the terms of that program. Her action in taking a walk outside for fresh air after lunch was for her own personal comfort, not recognized as a doctrine applicable to the facts of an employee injured at her own residence under telework or flexiplace. Moreover, her employer did not compel or mandate that she reside on the premises of the national monument grounds.²⁵ Appellant's contention that her employer occasionally benefited from her residence in the park is not sufficient to extend coverage under the premises rules applicable in this situation.²⁶ At the time of the snake bite, it cannot be said that she was engaged in an activity essential to her employment or reasonably incidental to the duties she was hired to perform.²⁷ The Board finds that the injury she sustained did not arise in the course of her federal employment.

²³ 26 ECAB 134 (1974).

²⁴ The Board quoted the Supreme Court of Illinois: "The purpose of the Workmen's Compensation Act is to protect the employee against risks and hazards which are peculiar to the nature of the work he is employed to perform. Injuries resulting from risks personal to the employee are not compensable." *Id.* at 141.

²⁵ The Board is not unmindful of the fact that some state courts, including Arizona, have extended the Bunkhouse rule to instances in which the employee resides at a remote area rented from the employer and away from other reasonable housing alternatives. See *Hunley v. Industrial Comm'n*, 113 Ariz. 187, 549 P.2d 159 (1976). Compare *Gaona v. Indus. Comm'n.*, 128 Ariz. 445, 626 P.2d 609 (1981) coverage was denied under the Bunkhouse Rule as the claimant who was permitted but not required to be on the premises merely alleged he could not afford alternate housing while similar workers had no difficulty finding quarters.

²⁶ The nature of the telework program and the premises rules applicable to resident employees distinguish the facts of appellant's case from *Emma Varnerin, M.D.*, 14 ECAB 253 (1963) in which the Board applied the general coming and going premises rule to an employee injured while walking from her living quarters on one part of the premises to the building where she worked. Compare *K.W.*, Docket No. 07-1759 (issued February 27, 2008) where the employee fell on steps of a house rented from the employer. The Board denied the claim, noting that under the lease agreement she was responsible for maintaining both the house and the yard.

²⁷ Compare *S.B.*, Docket No. 07-2352 (issued February 26, 2008). The employee sustained a head injury when bitten by a squirrel. At the time of the incident, she was walking from a parking lot to the employer's building. The Board noted that the parking lot was not part of the employer's premises. The injury occurred off premises and that the hazard giving rise to injury was nonemployment related and faced by all those using the parking lot: wildlife living in the vicinity.

CONCLUSION

The Board finds that appellant's injury on June 12, 2009 was not sustained while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 23, 2010
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