United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 09-1071**
	)	**Issued: February 18, 2010**
DEPARTMENT OF THE NAVY, PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH, Employer	)	

Appearances:
Robert A. Shaines, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated September 10, 2008 and January 14, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained an injury to both wrists on January 28, 2004 in the performance of his federal employment; and (2) whether the Office properly denied merit review of the claim on January 14, 2009.

FACTUAL HISTORY

Appellant, a 46-year-old apprentice pipe fitter, filed a traumatic injury claim on March 23, 2004. He alleged that on January 28, 2004 he fell from his bicycle and injured his wrists as he was attempting to cross the railroad tracks adjacent to the employing establishment. Appellant noted that the incident occurred at 3:05 p.m. His supervisor noted that he was leaving

work on that day when the alleged incident occurred. Appellant's supervisor also noted that appellant's regularly scheduled hours were from 7:00 a.m. to 3:30 p.m.

In a statement dated April 9, 2004, appellant noted that the injury occurred after work hours, as he rode his bike just outside CIA gate, #2, in front of the credit union.

By decision dated May 11, 2004, the Office denied the claim. It accepted that the January 28, 2004 incident occurred, but found that appellant failed to submit sufficient medical evidence to establish that the claimed medical condition resulted from the accepted event.

By letter dated August 23, 2004, appellant's attorney requested reconsideration.

In a September 6, 2007 statement, the employing establishment's human resources specialist stated that appellant was on government-owned and maintained property on January 28, 2004 when he injured his wrists on his bicycle.

By decision dated January 18, 2008, the Office denied appellant's claim but modified its May 11, 2004 decision. It stated that it was not clear whether the claimant was injured while engaged in activity reasonably incidental to the employment. The Office found that riding a bicycle was not an activity reasonably incidental to his work activities after official working hours. It noted the September 6, 2007 statement from the employing establishment's human resources director, which stated that it was unclear whether appellant was acting within the scope of employment and asserted that no evidence that his presence on the premises at the time of injury was required as a condition of his employment.

On May 31, 2008 appellant requested reconsideration.

In a February 5, 2008 report, received by the Office on June 24, 2008, Dr. Frank A. Graf, Board-certified in orthopedic surgery and appellant's treating physician, reviewed the history of injury and noted that appellant had experienced bilateral carpal tunnel syndrome and mid-lower back pain in addition to the January 28, 2004 work incident in which he injured both wrists. He stated that appellant had hand symptoms, which diminished his functional capacities. Dr. Graf also related that appellant's low back pain affected his performance at work. He opined that appellant's bilateral hand condition was a work-related cumulative trauma disorder appropriately diagnosed as carpal tunnel syndrome, despite the fact that his electromyelogram studies were negative. Dr. Graf stated that due to these conditions appellant had been assigned to a light-duty job, working with restrictions.

In a March 7, 2008 report, received by the Office on June 24, 2008, Dr. Graf reviewed the January 18, 2008 Office decision. He indicated that appellant had required the use of a bicycle to access his car at the employing establishment parking lot until recently, when he obtained handicap license plates, which obviated the need to use a bicycle. Dr. Graf therefore opined that appellant's use of a bicycle to traverse the distance between the worksite and the parking lot on January 28, 2004 represented an integral part of appellant's workday at that time and an integral part of his duty on that day.

In a statement received by the Office on June 3, 2008, appellant asserted that riding a bicycle was a common and prevalent practice among employees at the employing establishment.

He stated that, due to the various medical conditions he had at that time, as noted by his treating physicians, he required a bicycle to mitigate the discomfort he experienced walking from the worksite to the parking lot. Appellant asserted that bicycles were an "indispensable" tool during and after hours of employment and aided in the efficient operation of the employing establishment. He stated that the employing establishment had previously provided bicycles to its employees and that they continued to be a part of the employees' workday.

In an August 5, 2008 statement, the employing establishment's human resources specialist responded to appellant's statement. She denied that the employing establishment provided appellant with a bicycle and asserted that there are no bicycles on their property.

By decision dated September 10, 2008, the Office denied modification of the January 18, 2008 Office decision.

On October 17, 2008 appellant requested reconsideration.

By decision dated January 14, 2009, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] 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 performance.[2] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration. Course of employment relates to the elements of time, place and work activity: the injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[3]

As to employees having fixed hours and a fixed place of work, injuries occurring on the premises while they are going to and from work before or after working hours or at lunchtime are compensable.[4] The course of employment for such employees embraces a reasonable interval before and after official working hours while the employee is on the premises engaged in

[1] 5 U.S.C. § 8102(a).

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

[3] *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] *Emma Varnerin, M.D.*, 14 ECAB 253, 254 (1963); 1 Arthur Larson & Lex K. Larson, Larson, *The Law of Workers' Compensation*, Chapter 13 (June 2006).

preparatory or incidental acts. What constitutes a reasonable interval depends not only on the length of time involved but also on the circumstances occasioning the interval and the nature of the employee's activity.[5]

The premises of the employer, as that term is used in workers' compensation law, are not necessarily coterminous with the property owned by the employer. They may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of legal title.[6] When the place of employment is a building, it is not necessary that the employer own or lease the place where the injury occurred. It is sufficient if the employer has some kind of right of passage, as in the case of common stairs, elevators, vestibules, concourses, hallways, walkways, ramps, footbridges, driveways or passageways through which the employer has something equivalent to an easement.[7]

ANALYSIS

Appellant had fixed hours and a fixed place of work. His injury is considered to have arisen in the course of employment if it occurred: (1) on the premises; (2) a reasonable interval after official working hours; and (3) while he was leaving work, or engaged in preparatory or incidental acts.

Appellant has alleged that his injury occurred after work while he was riding a bicycle to his car, on the premises of the employing establishment.

The Office denied his claim because it was unclear whether appellant was in the scope of his employment at the time of injury and whether appellant's presence on the premises was a requirement or condition of employment. The evidence of record bearing on this issue is: (a) appellant's statements that the injury occurred at 3:05 p.m. while he was riding his bicycle to his car; (b) the supervisor's statement that appellant's shift ended at 3:30 p.m.; (c) appellant's statement that the incident occurred just outside the CIA gates; and (d) the September 6, 2007 statement from the employing establishment's human resources specialist indicating that appellant was on government-owned and maintained property on January 28, 2004 when he injured his wrists on his bicycle.

An injury is compensable if it occurs on the premises within a reasonable time after the end of a work shift if the employee is doing something reasonably incidental to his employment.

The Office did not sufficiently develop this evidence. Two issues remain unresolved in this case because the Office did not make adequate fact findings. First, if appellant's shift ended at 3:30 p.m. it is unclear why he was riding his bicycle to his car at 3:05 p.m. that afternoon. The record is not clear exactly where he traveled from the time he left the building, intent on riding his bicycle to his car, to the time he fell off of his bicycle while crossing the railroad tracks; nor is the record clear how long this took. Secondly, while the employer indicated that the incident

[5] *Nona J. Noel*, 35 ECAB 439 (1983); Larson § 21.06.

[6] *Wilmar Lewis Prescott*, 22 ECAB 318, 320-21 (1971).

[7] Larson § 13.04[3].

occurred on the premises, appellant's statement indicates that the incident occurred outside the "CIA gates." The record contains no diagram of the building and the surrounding property, including walkways, sidewalks, streets, parking lots and the position of the railroad tracks. The Board will set aside the Office decisions denying appellant's claim and remand the case for further development.[8] After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's his for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of evidence is necessary.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2009 and September 10, 2008 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for further development consistent with this opinion of the Board.

Issued: February 18, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[8] In light of the Board's decision to remand, the case to the Office to determine whether appellant sustained an injury in the performance of duty on January 28, 2004, the Board need not consider the Office's January 14, 2009 nonmerit decision.