United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 09-1718**
	)	**Issued: March 5, 2010**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Phoenix, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 16, 2009 appellant filed a timely appeal from a March 20, 2009 decision of the Office of Workers' Compensation Programs denying her claim for an injury on October 7, 2008. 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 October 7, 2008.

FACTUAL HISTORY

On October 9, 2008 appellant, then a 57-year-old disclosure assistant, filed a traumatic injury claim alleging that on October 7, 2008 she sustained an injury as she walked to her private vehicle and slipped on water that was on a sidewalk. The emergency room report provided a history that she was walking out of an office building when she slipped in a puddle of water, fell backward, striking her head and losing consciousness. The employing establishment indicated

on the back of her claim form that appellant was walking to a parking lot at the end of her tour of duty when she slipped in a puddle of water that was in the common area outside her building.

In an October 8, 2008 statement, David Votaw, an employee, stated that on October 7, 2008 at about 3:28 p.m. he was exiting the employing establishment building and held open an exit door for a woman. She walked approximately 10 to 15 feet and then her right foot slid forward in a puddle of water. Her body fell backward and she used a rolling travel bag to support herself as she fell. Mr. Votaw stated that she appeared to be conscious as her eyes were open and she was looking around. Another employing establishment employee called for emergency assistance and a fire crew arrived and treated her.

Cary Holmes, a federal real estate specialist, advised the Office that the employing establishment leased the building from a private industry lessor. He stated that the private lessor owned, operated, maintained and controlled the common grounds outside the building leased by the employing establishment. The area where appellant fell was a common area with grass, trees and a sidewalk leading to a parking garage. She fell while walking on the public sidewalk. The garage was used by both federal employees and private industry employees. The employing establishment had six to seven reserved spaces for employees who used a government vehicle to perform investigative work but appellant was not one of these employees. Individuals with private vehicles, such as appellant, paid parking fees to the building lessor. The employing establishment had no control over the garage or adjacent sidewalk. Public transportation was available and it was not necessary for employees to drive to work. Erin Winschell, a federal contracting officer, advised the Office that the common area where appellant fell was not federal premises.

By decision dated March 20, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on October 7, 2008 while in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] 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."[3] "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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id.* at § 8102(a).

[3] 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).

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.[4] 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.[5]

The employing establishment premises may include all the property owned by the employer.[6] 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.[7] 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.[8] 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.[9] Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the premises of the employing establishment.[10] 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.[11]

ANALYSIS

Appellant alleged that she sustained an injury on October 7, 2008 as she walked to her private vehicle in a parking garage and slipped on water that was on a sidewalk between the employing establishment building and the parking garage. The record does not establish that the incident occurred on the employing establishment premises.

The evidence of record shows that the sidewalk where the October 7, 2008 incident occurred was not controlled by, or for the exclusive use of, the employing establishment or its employees. The sidewalk and adjacent parking garage were open to the general public, including visitors to the employing establishment, visitors to other buildings in the vicinity and employees

[4] *D.L.*, 58 ECAB 667 (2007).

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

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

[7] *Id*.

[8] *D.L.*, *supra* note 4.

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

[10] *Id.*

[11] *D.L.*, *supra* note 4.

of private businesses. There is no evidence that the employing establishment maintained the sidewalk where appellant fell. For these reasons, appellant did not establish that she was injured on the premises of the employing establishment.

The next question is whether appellant's claimed injury occurred in the course of her employment despite the fact that it did not occur on 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.[12] The record in this case does not support the application of an exception to the off-premises rule. The hazard encountered by appellant, slipping in water on a public sidewalk leading to a public parking garage, was a hazard that was faced by all those who used the sidewalk and garage. The conditions giving rise to the injury, a puddle of water on the sidewalk, 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 sidewalk leading to the parking lot.

As appellant's injury occurred off the employing establishment premises while she was walking to her private vehicle at the end of her work shift, 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 October 7, 2008.

On appeal, contends that the Office's decisions are contrary to fact and law. As noted, however, the evidence does not establish that she was injured on employing establishment premises or that the circumstances of the incident on October 7, 2007 constituted an exception to the off-premises rule. The Office properly denied her claim for compensation.

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 October 7, 2008.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2009 is affirmed.

Issued: March 5, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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