



at Wisconsin Ave. when another vehicle hit her from behind. The accident occurred at 1:00 p.m. Appellant was seen in the emergency room later that evening and treated for muscle spasms. The employing establishment challenged the claim noting, among other things, that she was not in travel status or performing her regular duties at the time of her off-premises MVA.

On August 12, 2009 the employer advised the Office that there were conflicting accounts regarding what appellant was doing at the time of the July 29, 2009 accident. Appellant stated that she left the office to speak with a carrier when the accident occurred. According to others, she was on her way to lunch when she stopped in the middle of the street to talk to a carrier she saw while on her way to lunch. The employing establishment was in the process of obtaining statements from various employees.

On August 12, 2009 the Office requested that appellant provide additional medical evidence regarding her claimed July 29, 2009 injury. It advised her about its recent conversation with her employer regarding her activities at the time of the July 29, 2009 MVA. The Office requested a statement addressing where appellant was going and what she was doing at the time of the accident.

In an August 7, 2009 statement, Byron Harkins noted that he was inside his vehicle parked at the intersection of Cherokee St. and Wisconsin Ave. As he was ready to pull off, he realized that appellant was at a complete stop to his left. Mr. Harkins stated that he rolled his window down and she began to speak when a white four-door Grand Prix rammed into the back of her vehicle. The driver of the white car pulled forward, exchanged words with appellant, then backed up and pulled off.

An undated statement from a witness whose name is illegible indicated that a man bumped appellant's car, then pulled on the side, then reversed and went through the alley.

In an August 25, 2009 statement, appellant advised that she was not on her way to lunch when the accident occurred nor had she told anyone she was going to lunch. She stated that she was on her way to the Benton Park Post Office on Jefferson Avenue when she noticed one of the mail trucks along the way. Appellant pulled over to ask the carrier for directions to Jefferson Avenue. She was headed to the Benton Park facility to seek assistance from the manager there in preparation for a telecom scheduled for 1:30 p.m. that afternoon. Appellant stated that she was rear-ended by a white Grand Prix at approximately 1:05 p.m. in the 2000 block of Cherokee St. She was stopped alongside the postal vehicle talking to the carrier at the time. Appellant stated that the driver of the other vehicle fled the scene. She tried to follow the driver, but he was driving dangerously. Appellant stopped, called the police and filed a report.

The employer submitted a September 1, 2009 report of investigation from the Office of Inspector General. Special Agent Kristine Ferrario interviewed a coworker of appellant, Earnistine Flanagan. On August 13, 2009 Ms. Flanagan, a supervisor, stated that each afternoon there was a telecom scheduled for 1:30 p.m. On July 29, 2009 appellant was acting manager and she reportedly approached Ms. Flanagan at approximately 12:45 p.m. and told her she was going to Lee's Chicken to get some lunch. Ms. Flanagan stated that appellant retrieved a Lee's coupon from her purse and left the building. At approximately 1:20 p.m. she received a call from appellant, who told her that she had been involved in an automobile accident. Appellant's car

was hit from behind. The other driver argued with her and then drove off. Appellant told Ms. Flanagan that she pursued the vehicle but was unable to keep up and then she returned to the scene of the accident. She waited for the police and her husband to arrive at the scene. Appellant returned to the office later that afternoon complaining that her whole body ached, especially her head. She later drove herself to the emergency room. A couple days later, appellant called Ms. Flanagan inquiring whether she was supposed to fill out an accident report. Ms. Flanagan told appellant she did not think so because appellant was at lunch and in her own personal vehicle. Appellant stated ““Didn’t I ask you if you wanted anything from Lee’s Chicken?”” Ms. Flanagan told appellant she had not.

Special Agent Ferrario also interviewed Mr. Harkins on August 13, 2009. In addition to providing details of the accident, Mr. Harkins noted that, after appellant returned from pursuing the other vehicle, he asked her what she was about to ask prior to the accident. Appellant stated that she was going to ask directions to Jefferson Avenue. Special Agent Ferrario asked Mr. Harkins where the closest Lee’s Chicken was located and he replied at Gravois Avenue and Jefferson Avenue.

Appellant was interviewed on August 17, 2009. She left her facility around 12:50 p.m. en route to the Benton Park facility to speak with Debra L. Powell about an upcoming telecom scheduled for 1:30 p.m. that day. As acting manager, appellant was expected to participate in the afternoon’s telecom. She reportedly got lost while driving to Benton Park and saw a postal vehicle parked at Cherokee St. and Wisconsin Ave. Appellant pulled up to the postal truck and stopped to ask the carrier, Mr. Harkins, for directions to Jefferson Avenue. She was then struck on the driver’s rear side by a white Pontiac Grand Prix. The driver of the Grand Prix pulled up along side appellant and yelled at her. He then turned his vehicle around and left the scene. Appellant pursued the Grand Prix but could not catch up. She returned to the scene of the accident. Appellant also explained that she was going to get some food from Lee’s Chicken because it was right across the street from her destination, the Benton Park Post Office. She never got a lunch break and was going to grab some food prior to the telecom, but was not specifically going ““out to lunch.””

Appellant was interviewed a second time on August 24, 2009. She tried to contact Ms. Powell twice on June 29, 2009 to get help for the upcoming telecom, but was unable to reach her. Appellant decided to go to Benton Park and, on her way back, would get some lunch from Lee’s Chicken prior to the 1:30 p.m. telecom. She stated that if she was running short on time she would participate in the telecom from Benton Park. Appellant reiterated that she was not specifically going out to lunch. Prior to leaving her facility she asked Ms. Flanagan if she wanted something from Lee’s Chicken. Appellant did not inform Ms. Flanagan that she was going to stop by Benton Park because they did not have a good relationship and she did not want to appear incompetent in front of Ms. Flanagan. She advised that Ms. Powell was unaware that appellant was coming to see her. Appellant was unable to reach her by telephone and reportedly needed Ms. Powell’s help. Special Agent Ferrario noted that appellant declined to provide a written statement.

Ms. Powell was interviewed by telephone on August 26, 2009. She was unaware that appellant was on her way to Benton Park on July 29, 2009, but was made aware that she had been in an accident. Ms. Powell spoke to appellant on the morning of July 29, 2009. Appellant

reportedly asked Ms. Powell to send her a link to logon to the telecom, which Ms. Powell did. That was the last time Ms. Powell spoke with appellant that day.

The Office received an August 12, 2009 attending physician's report (Form CA-20), from Dr. Robert E. Schultz, Sr., a Board-certified neurosurgeon, who had treated appellant since August 4, 2009 for cervical radiculopathy due to a July 29, 2009 car accident. Dr. Schultz provided similar information in a September 4, 2009 note. He released appellant to return to work as of September 8, 2009.

In a September 18, 2009 decision, the Office found that appellant was not in the performance of duty at the time of her July 29, 2009 accident. It found that the evidence did not support her contention that she was en route to the Benton Park Post Office to see Ms. Powell. Instead, appellant was off premises, in her personal vehicle, on a personal errand to obtain lunch. The Office denied her traumatic injury claim.

On September 28, 2009 appellant requested reconsideration. She submitted her time and attendance records for July 25 to 29, 2009 and a July 25, 2009 e-mail from Ms. Flanagan complaining about appellant being in charge of the facility. Appellant provided another July 25, 2009 e-mail directed to Ms. Powell requesting that she be available to assist appellant if necessary.

By decision dated December 7, 2009, the Office denied modification of the September 18, 2009 decision.

Appellant filed another request for reconsideration on December 17, 2009. She resubmitted her time and attendance records for July 29, 2009, which indicated that she was scheduled to work from 5:00 a.m. until 2:00 p.m., with a lunch break from 11:00 a.m. until 12:00 p.m. The December 7, 2009 decision did not specifically reference the previously submitted time and attendance records.

By decision dated January 13, 2010, the Office denied modification of the prior decisions.

### **LEGAL PRECEDENT**

The Act provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained "while in the performance of his duty."<sup>2</sup> In order to be covered, 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.<sup>3</sup> For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is

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<sup>2</sup> *Id.* at § 8102(a).

<sup>3</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 423-24 (2006).

compensable.<sup>4</sup> However, that same employee with fixed hours and a fixed workplace would generally not be covered when an injury occurs off the employing establishment premises while traveling to or from work.<sup>5</sup> The reason for the distinction is that the latter injury is merely a consequence of the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.<sup>6</sup>

### ANALYSIS

Appellant claimed that the July 29, 2009 MVA occurred while she was en route to the Benton Park facility to see Ms. Powell about a work-related matter. She also planned to stop at Lee's Chicken on the way back to her own facility prior to a scheduled 1:30 p.m. telecom. Lee's Chicken was located across the street from the Benton Park facility at the intersection of Gravois Avenue and Jefferson Avenue. Appellant was rear-ended when she stopped to get directions to Jefferson Avenue.

The record does not support appellant's contention that she was en route to the Benton Park facility to discuss matters related to the telecom scheduled later that afternoon. Ms. Powell was unaware of appellant's alleged visit. Appellant claimed that she was headed to the Benton Park facility because she had been unable to reach Ms. Powell by telephone; however, Ms. Powell had already spoken with appellant that morning about how to logon to the telecom. This discrepancy undermines her allegation. It is also noteworthy that appellant did not tell Ms. Flanagan that she was going to Benton Park. She claimed it was because they did not have a good relationship, but yet she reportedly offered to bring Ms. Flanagan some food from Lee's Chicken. Appellant stated in an August 25, 2009 statement that she had not informed anyone that she was going to lunch. However, Ms. Flanagan stated that appellant specifically told her she was going to Lee's Chicken and Ms. Flanagan saw her remove a Lee's coupon from her purse. Appellant told Special Agent Ferrario that prior to leaving, she asked Ms. Flanagan if she wanted some food from Lee's. This later statement clearly contradicts her assertion that she did not inform anyone that she was going to lunch. Appellant failed to inform anyone that she was going to Benton Park on a work-related matter. The Board finds that she was not en route to Benton Park at the time of the July 29, 2009 MVA.

To be covered, 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.<sup>7</sup> The record does not establish that appellant was traveling on work-related business at the time of her July 29, 2009 MVA. The employing establishment retained no authority over her during her off-premises, lunchtime outing to Lee's Chicken.<sup>8</sup> An employee with fixed hours and a fixed workplace generally would

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<sup>4</sup> *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

<sup>5</sup> *Idalaine L. Hollins-Williamson*, 55 ECAB 655, 658 (2004).

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* note 3.

<sup>8</sup> *Id.*

not be covered for an injury occurring off premises while traveling to or from work.<sup>9</sup> Accordingly, because appellant was injured off-premises while driving to get lunch, her injury is not covered under the Act.

**CONCLUSION**

Appellant was not in the performance of duty at the time of her July 29, 2009 motor vehicle accident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *Supra* note 4.