United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 11-528**
	)	**Issued: December 13, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Denver, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2010 appellant, through his attorney, filed a timely appeal from an August 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 sustained an injury in the performance of duty on June 29, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 8, 2010 appellant, then a 36-year-old security screener, filed a traumatic injury claim (Form CA-1) alleging an injury in the performance of duty on June 29, 2010.[2] She stated that between 4:00 and 4:05 p.m. she was crossing a pedestrian walkway near Island 4 in a parking lot near the Denver Airport, attempting to get to Island 5, when she was struck by the side mirror of a "Wally Park" shuttle. Appellant described the injury as a closed head injury and nasal contusion. The reverse of the claim form, completed by the employing establishment, asserted that appellant was off duty, outside the airport in the ground transportation pick-up area.[3] According to the employing establishment the area was not owned or operated by the employing establishment.

By letters dated July 15, 2010, OWCP requested additional information from appellant and the employing establishment. In an August 5, 2010 response, an employing establishment human resources specialist stated that the incident did not occur in a parking lot. According to the specialist, there are public transportation pick-up islands outside the airport terminal, used by travelers and employees and Island 4 was approximately 90 to 100 feet beyond the terminal doors. The human resources specialist stated that appellant was crossing to another island en route to a Regional Transportation District (RTD) bus, when she was struck by the shuttle bus.

By decision dated August 20, 2010, OWCP denied the claim for compensation. It found that appellant was not in the performance of duty at the time of the June 29, 2010 incident.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[4] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[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 the master's business, at a place where he may reasonably be expected to be in connection with the employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[6]

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[2] In her description of the injury, appellant used the date June 27, 2010, but she identified the date of injury elsewhere on the form as June 29, 2010, the reverse of the form provides a June 29, 2010 date of injury, and the record contains medical treatment on June 29, 2010 indicating that the alleged incident occurred on June 29, 2010.

[3] The record also contains a handwritten CA-1 dated July 3, 2010, with regular work hours reported as 6:00 a.m. to 4:00 p.m. On this claim form appellant stated that she was leaving work when she was struck by a shuttle bus.

[4] 5 U.S.C. § 8102(a).

[5] *Valerie C. Boward*, 50 ECAB 126 (1998).

[6] *R.A.*, 59 ECAB 581 (2008); *Mary Keszler*, 38 ECAB 735 (1987).

The Board has recognized 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 or during a lunch period, are not compensable, as they do not arise out of and in the course of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[7]

ANALYSIS

In the present case, appellant alleged that she was struck by the side mirror of a shuttle bus on June 29, 2010. Based on her statements on the claim form and the response of the employing establishment, the incident occurred shortly after she left work for the day and was on her way to catch a local bus to take her home. As noted, the criteria used to determine if an incident arises in the course of employment include the time, place and the activity involved in the incident.

With respect to time, the incident occurred after appellant's work shift had ended. It did not therefore occur at a time when the employee may reasonably be said to be engaged in the employing establishment's business. With respect to place, the incident occurred outside the airport terminal in an area where public transportation was available. The employing establishment stated that it did not own or operate the area. While ownership or control of a location does not necessarily establish the boundaries of the employing establishment's premises,[8] it is an important consideration. In *J.B.*, a security screener was struck by a shuttle bus in a crosswalk outside the airport terminal.[9] The Board noted that the employing establishment did not own, control or maintain the area, and also noted that this was an area open to the general public. Even if employees customarily used the area, "this would not alter the public nature of the walkway or render it part of the employing establishment's premises."[10]

In the present case, the evidence establishes that the crosswalk where the June 29, 2010 incident occurred was open to the general public and was not owned or maintained by the employing establishment. The risk of being struck by a shuttle bus is a risk faced by all travelers to the airport, and not a special hazard faced by employees.[11] In *F.S.* a security screener fell in a crosswalk outside the airport terminal on her way to work.[12] The Board found that even if this had been her normal route to and from work, the risk of an injury on the crosswalk was one

[7] *See John M. Byrd*, 53 ECAB 684 (2002); *see also Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

[8] *See, e.g., Diane Bensmiller*, 48 ECAB 675 (1997).

[9] Docket No. 11-106 (issued August 17, 2011).

[10] *Id.*

[11] The Board has recognized that the employing establishment premises may be extended to include a specific route used primarily by employees that presents a special hazard to these employees. *See Michael K. Gallagher*, 48 ECAB 610 (1997). Factors such as whether the employing establishment contracted for the exclusive use of the area, and whether the area is maintained to see who may access the premises, are considered. *See R.M.*, Docket No. 07-1066 (issued February 6, 2009).

[12] Docket No. 09-1573 (issued April 6, 2010).

shared by all travelers, not a special hazard to airport employees. In the present case, the Board finds the June 29, 2010 incident did not occur on the employing establishment's premises.

The third criterion to consider is the activity itself. In this case, appellant was not reasonably fulfilling the duties of her employment or something incidental to the fulfillment of her job duties.[13] She had left work and was on her way to take a bus home. As noted, an employee going from work who is injured off-premises is not in the course of employment. Based on the evidence of record, the Board finds that the evidence fails to establish an exception to the general rule.

The Board finds that appellant was not in the course of employment when she was struck by the shuttle bus on June 29, 2010. Since appellant was not in the course of employment at the time of the June 29, 2010 incident, OWCP properly denied the claim for compensation.

CONCLUSION

The Board finds that appellant's injury on June 29, 2010 did not occur in the performance of duty and she is not entitled to compensation under FECA.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 20, 2010 is affirmed.

Issued: December 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

[13] *Cf. D.M.*, Docket No. 10-1723 (issued August 23, 2011), where a security screener was stopped by a passenger as she left work and was injured while assisting the passenger.