



and left side at 2:20 p.m. on May 28, 2009. He was waiting to park in his car when a car backing out of a parking spot struck his front driver's side door and front left fender. Appellant first stopped work for various periods beginning May 29, 2009. On a Form CA-1, John Warhol, a supervisor, stated that appellant's regular work hours were from 3:41 p.m. to 12:11 a.m. He contended that appellant did not sustain injury while in the performance of duty on May 28, 2009 noting, "Car accident in parking lot."

In a June 9, 2009 letter, OWCP requested that appellant submit additional factual evidence in support of his claim.

Appellant submitted medical evidence including return-to-work forms, dated in June 2009, which were completed by Dr. J.P. Meyer, an attending Board-certified anesthesiologist.

An OWCP claims examiner requested that the employing establishment answer questions regarding the parking lot where the May 28, 2009 accident occurred and the circumstances for appellant's presence at work prior to his start time. In a June 4, 2009 statement, Steve Cockerham, a supervisor, stated that the parking lot where the accident occurred was on the premises but was owned and operated by a private company. The employing establishment had a designated parking area for inspection personnel and employing establishment employees were required to park in this area. Mr. Cockerham noted that appellant's official tour of duty was from 3:41 p.m. to 12:11 a.m. He stated that sometimes there was a brief block of scheduled overtime prior to the start of the shift, so appellant might have been required to be on the floor by 3:29 p.m. if he was assigned to the head or viscera inspection stations on May 28, 2009. According to the time of accident recorded on the Form CA-1, appellant was present in the parking lot over one hour before his scheduled time to report for duty. He stated that inspectors arrived at the facility in order to prepare for work at their discretion and the employing establishment did not dictate the time they arrived before their shift started. Some inspectors showed up at work more than 30 minutes before their shifts started and many employees had personal reasons for doing so. Moreover, many inspectors showed up less than 30 minutes before their scheduled start times.

Appellant was also asked to address the circumstances of his early arrival to work on May 28, 2009. In a June 2009 response, he stated that he lived 20 miles from the plant where he worked and, because he lived in a farming area, he normally left early to be on time in case a farmer with equipment would be in front of him and he would be unable to pass. Appellant stated that parking was very limited at the work site and that he had to be ready and "on the line" for his 3:29 p.m. start time. He stated that he allowed 20 to 25 minutes to change his clothes and check his equipment and 10 to 15 minutes to catch up on paperwork and check for new directives. Appellant submitted additional medical evidence in support of his claim.

In a June 19, 2009 statement, Lyle Johnson, Jr., a coworker stated that he entered the employing establishment's parking lot on May 28, 2009 and stopped about one car length behind appellant's car. He observed that, while appellant was waiting for a parking space to open up to his right, a car backed directly into the left front fender of appellant's car.

In a July 13, 2009 decision, OWCP denied appellant's claim. It noted that the course of employment for an employee having a fixed time and place of work embraced a reasonable time interval before official working hours while the employee was on the premises engaged in preparatory or incidental acts.<sup>2</sup> It was found that appellant's injury did not occur within a reasonable time interval before official working hours while performing acts incidental to his employment.

Appellant requested reconsideration of his claim. Counsel prepared a brief in which he cited federal and state case law in support of his argument that appellant sustained an injury in the performance of duty on May 28, 2009. He argued that the facts of appellant's case were different than those of the *Holst* case cited by OWCP in its July 13, 2009 decision. Appellant submitted additional medical reports in support of his claim, including treatment reports of Dr. Meyer.

In a June 2, 2010 statement, appellant noted that at times he was required to start work earlier than his normal start time and he frequently was not notified of the earlier start time until he had actually arrived at the work site and there were only a few minutes left before the new start time. He listed 10 dates between January and June 2009 when he had start times that were earlier than his usual start time. Appellant did not address whether he was required to start work early on May 28, 2009.

In a July 12, 2010 letter, an employing establishment official stated that inspectors were not compensated for any time prior to their shift start times and were only required to be on the line at the designated shift start time. She noted that, as acknowledged by appellant, there was no requirement that he had to start work early for any reason on May 28, 2009, the date of the accident. The employing establishment contended that appellant arrived at work on May 28, 2009 "an excessive amount of time before the start of the shift."

In an August 9, 2010 decision, OWCP affirmed the July 13, 2009 decision.

### **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."<sup>3</sup> The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."<sup>4</sup> The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance. 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

---

<sup>2</sup> For this proposition, OWCP cited *Mark C. Holst*, 39 ECAB 496 (1988).

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.”<sup>5</sup>

The Board has accepted the general rule of workers’ compensation law that an injury sustained by an employee having fixed hours and place of work while going to or coming from work is generally not compensable because it does not occur in the performance of duty. Exceptions to the rule have been declared by the courts and workers’ compensation agencies. One such exception almost universally recognized is the premises rule: an injury that occurs to an employee going to or coming from work before or after working hours or at lunch, while on the premises of the employer, is compensable. However, the occurrence of an incident on the employing establishment premises which leads to an injury is not sufficient, in itself, to give rise to coverage under FECA as the employee must show not only that the injury encompasses the work setting but also that the employment caused the injury.<sup>6</sup> The facts must show that the injury was sustained within a reasonable time interval of work and that a substantial employer benefit was derived or an employment requirement gave rise to the injury.<sup>7</sup>

In *T.F.*,<sup>8</sup> the employee sustained injury when she tripped on a loose floor tile some 25 minutes before her work shift began at 6:00 a.m. She was on the premises of her employer in the vicinity of her work cubicle. The Board affirmed the denial of compensability under the statute, noting that the reasons given by the employee for her early arrival at work included being able to find a good parking place, drink coffee, eat breakfast and put her lunch away. The activities in which she was engaged at the time of injury were found personal to the employee and not reasonably incidental to the work of her employer. Moreover, the Board noted that her presence at the premises some 25 minutes prior to the commencement of her work shift did not constitute a reasonable interval under the circumstances. The employee’s presence was not required by her employer, did not pertain to preparatory activities reasonably incidental to her employment as a tax examiner, or provide a substantial benefit to her employer.

### ANALYSIS

On May 29, 2009 appellant filed a traumatic injury claim alleging that he sustained a work-related injury to his neck, back, left arm and left side at 2:20 p.m. on May 28, 2009. He was waiting in his car for a parking spot when a car backing out from a spot hit his car on the

---

<sup>5</sup> *Mary Keszler*, 38 ECAB 735, 739 (1987).

<sup>6</sup> *See Howard M. Faverman*, 57 ECAB 151 (2005).

<sup>7</sup> *See William W. Knispel*, 56 ECAB 639 (2005); *Venicee Howell*, 48 ECAB 414 (1997); *Arthur A. Reid*, 44 ECAB 979 (1993); *Nona J. Noel*, 36 ECAB 329 (1984). *Compare John F. Castro*, Docket No. 03-1653 (issued May 14, 2004) with *George E. Franks*, 52 ECAB 474 (2001). In cases concerning what constitutes a reasonable interval before or after work, the Board has been influenced by the activities engaged in by the employees before or after work. In *Howell*, the Board found coverage when the employee was injured five minutes after work while performing the incidental task of submitting a job bid. However, in *Noel*, the Board denied coverage when the employee was injured 90 minutes before work while engaging in the personal activity of eating breakfast.

<sup>8</sup> Docket No. 09-154 (issued July 16, 2009).

front driver's side door. The record reflects that appellant's usual tour of duty was from 3:41 p.m. to 12:11 a.m.<sup>9</sup>

The record establishes that the incident in this case occurred as alleged on the premises of the employing establishment. This factor alone, however, is not sufficient to establish entitlement to benefits as the concomitant requirement of an injury arising out of the employment must be shown, and this encompasses not only the work setting but also that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show that the injury occurred within a reasonable time interval of work and that a substantial employer benefit was derived or a work requirement gave rise to the injury.<sup>10</sup>

The Board finds that, at the time of the injury, appellant was not on the employing establishment premises for reasons related to work. The record reflects that his injury occurred about 80 minutes before the start of his regular shift. Appellant stated that he lived 20 miles from the plant where he worked and indicated that, because he lived in a farming area, he normally left early to be on time in case a farmer with equipment would be in front of him and he would be unable to pass. He indicated that parking was very limited at the work site and that he had to be ready and "on the line" for start time. The Board notes that appellant's wish to avoid being detained by slow moving traffic and to find a parking space at work are purely personal reasons for showing up early at work.<sup>11</sup> Appellant also generally claimed that he tended to show up early at work to perform activities such as changing clothes, checking machinery, catching up on paperwork and checking for new directives, but there was no requirement that he arrive early to work to perform these activities. He was not performing such duties when the injury occurred about 80 minutes before his tour of duty began on May 28, 2009.

What constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and nature of the employment activity. The record reveals that appellant was not required to be at work prior to about 3:41 p.m. on May 28, 2009. Appellant did not advise his supervisor of any condition that required him to be on the premises prior to his official hours in order to prepare for his daily work duties. Accordingly, the Board finds that his presence on the premises about 80 minutes prior to

---

<sup>9</sup> Although on some days appellant was required to start work at a slightly earlier time, there is no evidence that this was the case on May 28, 2009.

<sup>10</sup> See *supra* notes 6 and 7.

<sup>11</sup> See *T.F.*, *supra* note 8.

the commencement of his tour of duty on May 28, 2009 did not constitute a reasonable interval before the start of the work shift, under the circumstances of this case.<sup>12</sup>

Appellant's arrival at the employing establishment prior to official starting time does not automatically place his activities outside the scope of the employment. However, his actions at the time of his accident on May 28, 2009 did not further the employer's business or provide a substantial benefit to the employer. Appellant's presence on the premises at the time of the claimed injury was not required as a condition of his employment, nor was he involved in any preparatory activity reasonably incidental to his employment activities on May 28, 2009. He chose to arrive at the employing establishment early as a matter of personal convenience. Appellant generally indicated that he tended to arrive early at work to perform activities that he felt prepared him for the workday, but he was not required to do so and he was not performing any preparatory or incidental actions at the time of his accident.

Counsel contended that appellant sustained an injury while in the performance of duty on May 28, 2009.<sup>13</sup> However, the Board has long held that entitlement to benefits under statutes administered by other federal or state agencies does not establish entitlement to benefits under FECA.<sup>14</sup>

There is no evidence that appellant's injury resulted from any employment-related factors. Thus, the Board finds that he has failed to establish that he sustained an injury in the performance of duty on May 28, 2009.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on May 28, 2009.

---

<sup>12</sup> See *T.F.*, *supra* note 8 where the Board found that the claimant's arrival at work 25 minutes before her start time was not a reasonable interval.

<sup>13</sup> Counsel argued that the facts of appellant's case were different than those of *Mark C. Holst*, *supra* note 2, a case he believed OWCP relied on to deny appellant's claim. However, OWCP only cited this case for the general proposition that the course of employment for an employee having a fixed time and place of work embraced a reasonable time interval before official working hours while the employee was on the premises engaged in preparatory or incidental acts.

<sup>14</sup> See *Donald Johnson*, 44 ECAB 540, 551 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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