United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 11-1432**
	)	**Issued: January 23, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Old Greenwich, CT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 1, 2011 appellant filed a timely appeal from a March 11, 2011 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 January 12, 2011.

FACTUAL HISTORY

On January 24, 2011 appellant, then a 42-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging an injury in the performance of duty on January 12, 2011. He slipped on snow-covered ice while he was walking from the train station to the employing

[1] 5 U.S.C. § 8101 *et seq.*

establishment at 7:15 a.m. Appellant described the injury as a broken left ankle. The reverse of the claim form completed by the employing establishment noted that the injury took place off the employing establishment's premises, and that appellant was not in the performance of official "off[-]premise[s]" duties. The employing establishment noted that appellant's regular hours were from 7:00 a.m. to 3:30 p.m.

In a letter attached to the claim form, the employing establishment advised that appellant's injury occurred at the entry of the Old Greenwich commuter lot/Station Drive South which was on town property and approximately 60 yards from the employing establishment. It stated that the area was not owned or operated by the employing establishment.

By letter dated February 4, 2011, OWCP requested additional information from appellant and the employing establishment. In a February 9, 2011 response, appellant stated that the employing establishment required him to report to duty on January 12, 2011, during a major snow storm. He slipped and fell on the side walk as he walked towards the entrance to the Old Greenwich commuter lot/Station Drive South. Appellant also submitted medical documents pertaining to his ankle fracture.

By decision dated March 11, 2011, OWCP denied the claim for compensation. It found that appellant was not in the performance of duty at the time of the January 12, 2011 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.[2] 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.[3]

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.[4] In deciding whether an injury is covered by FECA,[5] the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.[6]

[2] 5 U.S.C. § 8102(a).

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

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

[5] 5 U.S.C. §§ 8101-8193.

[6] *Mark Love*, 52 ECAB 490 (2001).

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, subject to certain exceptions.[7] Underlying some of these exceptions is the principle that course of employment should extend to any injury that occurred at a point where the employee was within the range of dangers associated with the employment.[8] The most common ground of extension is that the off-premises point at which the injury occurred lies on the only route, or at least on the normal route, which employees must traverse to reach the premises, and that therefore the special hazards of that route become the hazards of the employment. This exception contains two components. The first is the presence of a special hazard at the particular off-premises point. The second is the close association of the access route with the premises, so far as going and coming are concerned.[9]

ANALYSIS

In the present case, appellant alleged that he slipped and fell on a sidewalk while on his way to work on January 12, 2011. The Board finds that he has not established that his injury occurred in the performance of duty.

With regard to time, based on his statements on the claim form and the response of the employing establishment, the incident occurred at 7:15 a.m. shortly after his shift was to begin. Appellant was still on his way to the employing establishment and had not yet begun his work. The Board has held that the mere fact that an injury occurs during the workday is not sufficient, in and of itself, to bring an injury within the performance of duty. For compensability, the concomitant requirement of an injury, "arising out of the employment," must also be shown.[10]

With regard to location, the incident occurred on a public sidewalk, some 60 yards from the premises of the employing establishment. This sidewalk was open to the general public. The employing establishment stated that it did not own or operate the area. Even if this public sidewalk were the customary means of access to the employing establishment, this does not alter the public nature of the sidewalk or render it a part of the employing establishment premises.[11]

Further, appellant's injury does not fall within the exception for proximity. Appellant alleged that he was within a few yards of the employer's premises; that the sidewalk was the means of ingress and egress to the employing establishment; and that a hazard, heavy snow, existed at the time of his injury. In a factually similar case, the Board held that these facts alone

[7] *See John M. Byrd*, 53 ECAB 684 (2002); *T.M.*, Docket No. 11-528 (issued December 13, 2011); *see also Gabe Brooks*, 51 ECAB 184 (1999); *Thomas P. White*, 37 ECAB 728 (1986); *Robert F. Hart*, 36 ECAB 186 (1984).

[8] *See R.O*, Docket No. 08-2088 (issued May 18, 2009).

[9] *See also* Larson, *The Law of Workers' Compensation* § 13.01(3) (2006).

[10] *William W. Knispel*, 56 ECAB 639 (2005); *Luis A. Velez*, 56 ECAB 592 (2005).

[11] *Supra* note 8.

do not establish that the injury occurred in the performance of duty. The Board explained that the hazard that caused appellant's injury, ice or snow on a public sidewalk, is a hazard commonly faced by all pedestrians in a northeastern city during the winter. Therefore there was no special hazard at the off-premises point.[12]

Appellant was not reasonably fulfilling the duties of his employment or doing something incidental to the fulfillment of his job duties. He had not begun his tour of duty and was walking on a public sidewalk toward the employing establishment. As noted, an employee going to work who had been injured off-premises is not in the course of employment.

On appeal, appellant asserted that because the nature of his work dictates that he report to the office even in the midst of a major snow storm, an exception should be granted in his case. The Board notes that a snow storm is an ordinary, nonemployment hazard of the journey itself, which are shared by all travelers. While appellant's employment is the cause of his journey between home and the employing establishment, workers' compensation was not intended to protect him against all the perils of such journey.[13] The Board finds that the snow storm cannot be fairly considered a hazard of the employment, and that the established exceptions mentioned above do not apply in appellant's case. As appellant was not in the course of employment at the time of the January 12, 2011 incident, OWCP properly denied the claim for compensation.

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's injury on January 12, 2011 did not occur in the performance of duty and he is not entitled to compensation under FECA.

[12] *See R.O.*, *supra* note 8; *see also Robert F. Hart*, 36 ECAB 186 (1984).

[13] *See Asia Lynn Doster*, 50 ECAB 351 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2011 is affirmed.

Issued: January 23, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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