United States Department of Labor
Employees' Compensation Appeals Board

G.E., Appellant	)	
and	)	**Docket No. 14-843**
	)	**Issued: September 23, 2014**
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2014 appellant filed a timely appeal of a January 9, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision finding that her traumatic injury did not occur in the performance of duty. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her July 5, 2012 fall occurred in the performance of duty.

FACTUAL HISTORY

On July 6, 2012 appellant, then a 33-year-old teleservice representative, filed a traumatic injury claim alleging that she fell at 6:05 p.m. on July 5, 2012 while walking up the slanted driveway of a parking garage towards her vehicle. She stated that she scraped her right knee and middle toe. On the reverse of the form, the employing establishment stated that appellant was

[1] 5 U.S.C. § 8101 *et seq.*

not injured in the performance of duty as her injury occurred after her scheduled work hours in a parking garage. It listed her regular work shift as 8:00 a.m. to 4:30 p.m.

Appellant sought medical attention on July 6, 2012. Dr. Louis Train, a Board-certified family practitioner, diagnosed sprained neck, sprain of the left wrist and sprain of the right ankle. He stated that appellant sustained a traumatic on-the-job injury.

OWCP requested additional factual information in support of appellant's claim from her and the employing establishment. The employing establishment responded on September 11, 2012 and stated that appellant worked overtime on July 5, 2012 until 6:00 p.m. It stated that it leased space in a private building that had a covered parking garage. There were a certain number of spaces allocated for employees to park but spaces were not individually assigned. Appellant was injured while returning to the space where she parked that day. OWCP asked whether her fall occurred on federal property and the employing establishment responded that where she fell in the parking garage was not considered federal property.

By decision dated September 12, 2012, OWCP denied appellant's claim finding that her injury did not occur in the performance of duty as she was not on federal property at the time of her injury. The employing establishment stated that it did not own, lease or manage the parking garage, that parking spaces were not assigned by the employing establishment and that garage parking was also available for other tenants of the building where she worked, and that there was limited street parking which some coworkers used. OWCP found that "the ramp on which appellant was injured did not have such proximity and relation as to be in practical effect a part of the employer's premises and her slip and fall constituted an off-premises injury while going to or coming from work which is not compensable…."

On September 17, 2012 the employing establishment noted that appellant worked until 6:00 p.m. on July 5, 2012 and that her injury occurred at 6:05 p.m. It stated, "Based on the contract, there are certain numbers of spaces that have been allocated for our employees to park, however, these are not assigned spaces. [The employing establishment] leases parking spaces for their employees from Navisys Group…." It noted that the employees did not purchase or lease the parking spaces.

Appellant requested a review of the written record by an OWCP hearing representative on October 8, 2012. She contended that the employing establishment established a lease agreement with the parking garage to allow employees to park, and that the injury did occur on property leased or managed by the employing establishment. Appellant also noted that employees attended yearly training that represented the parking garage as federal property. She stated that a coworker was injured in the garage and that the parking garage was attached to the building where she worked.

By decision dated December 28, 2012, OWCP's hearing representative found that the case was not in posture for a decision and remanded the claim for OWCP to further develop the issue of whether the garage where appellant was injured was owned, operated or controlled by the employing establishment including whether the employing establishment had contracted for the exclusive use by its employees of the parking garage or any portion of the parking garage. He also requested a diagram. The employing establishment was to answer whether employees were required to park in the garage, whether other parking was available, whether the parking

garage was monitored to ensure that no unauthorized cars parked there, whether it was appellant's responsibility to pay for parking and if not, who paid for parking.

OWCP requested this additional information from the employing establishment on January 11, 2013. On January 24, 2013 Mary Ann Roberson, Human Resource Specialist, responded, stating that the employing establishment did not own, operate or control the parking garage and that the garage was shared with other building tenants. She stated that appellant was injured in the parking garage. Ms. Roberson stated that the garage was not open to the public, that appellant was not required to park in the garage, but that other parking options were limited and the garage was provided for the convenience of employees. In response to whether other parking was available, she stated, "Yes, employees may park on the street, which we, [the employing establishment], do not recommend. The parking garage is provided for the employee's convenience and safety." The employees do not pay for parking, since parking spaces are provided as part of the lease agreement. Ms. Roberson further noted that the parking area was monitored by security guards to see that no unauthorized cars were parked there. The guards checked for parking decals to ensure that employees parked in the authorized spaces.

On February 28, 2013 OWCP requested a diagram of the boundaries of the employing establishment property and the location of appellant's injury site in relation to the premises. The employing establishment provided a diagram on March 12, 2013.

By decision dated January 9, 2014, OWCP denied modification of its prior decision finding that appellant had not established that she was on federal property at the time of her July 5, 2012 fall.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of any employee/employer relation.[2] FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."[4] "In the course of employment" deals with the work setting, the locale and time of injury.[5] In addressing this issue, the Board has stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in her master's business; (2) at a place where he may reasonably be

[2] *Minnie N. Heubner (Robert A. Heubner),* 2 ECAB 20, 24 (1948); *Christine Lawrence,* 36 ECAB 422, 423-24 (1985).

[3] *See* 5 U.S.C. § 8101 *et seq.*

[4] *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

[5] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[6]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being 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 some substantial employer benefit is derived or an employment requirement gave rise to the injury.[7]

ANALYSIS

Appellant alleged that she sustained sprains of her neck, ankle and wrist in the performance of duty on July 5, 2012 when she slipped and fell in a parking garage. OWCP denied her claim because it found that the parking garage where her fall occurred was not part of the employing establishment premises. Appellant had fixed hours and a fixed place of employment. Her regular work shift was from 8:00 a.m. to 4:30 p.m. However, on July 5, 2012, appellant worked authorized overtime until 6:00 p.m. The employing establishment indicated that appellant fell at 6:05 p.m. while on the grounds of the parking garage. There are two questions that must be addressed in this factual situation: first, whether appellant was leaving work within a reasonable time after the end of her shift; and second, whether the garage was part of the employing establishment's premises.

An employee who is leaving work and sustains an injury off the premises of the employing establishment is ordinarily not considered to be in the course of employment. Therefore, it is important to determine whether the location of the incident is considered to be part of the premises of the employing establishment. As to what constitutes the premises of an employing establishment, the Board has stated that the term premises as it is generally used in workers' compensation law, is not synonymous with property. The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases premises may include all the property owned by the employer; in other cases even though the employer does not have ownership and control of the place where the injury occurred the place is nevertheless considered part of the premises.[8]

The Board has pointed out that the factors, which determine whether a parking lot used by employees may be considered a part of the employing establishment's premises, include whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot, and whether other parking was available to the employees. Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the premises

[6] *Carmen B. Gutierrez,* 7 ECAB 58, 59 (1954).

[7] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[8] *L.F.*, Docket No. 13-1804 (issued January 10, 2014).

of the employing establishment. 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.[9]

In this case, the employing establishment leased the garage for the use of its employees. The garage was shared with other tenants, but was not open to the public. The parking area was monitored by security guards to ensure that no unauthorized cars were parked there. The guards checked for parking decals to ensure that employees parked in the authorized spaces. Employees were not required to park in the garage, but the employing establishment recommended that employees park there since other parking options were limited and the garage was provided for their safety and convenience. Employees are not required to park there since garage parking spaces were provided as part of the employing establishment's lease agreement.

In *R.R.*,[10] the claimant was injured when he fell on a wheelchair ramp located about 15 feet away from the west door of the building where he worked. He was on his way to retrieve his lunch from the parking lot used by the employing establishment. The Board found that the wheelchair ramp was not part of the employing establishment premises, noting that the ramp was on property owned by the airport and was not exclusively used by the employing establishment personnel and was open to the public. The employing establishment did not contract for exclusive use of the area, nor did the employing establishment maintain the area to see who might gain access to the premises. In *C.B.*,[11] the Board found that a parking lot was not part of the employing establishment's premises when the employing establishment did not have an exclusive use contract and the parking lot was used by a wide variety of airport employees, not just those employed by the employing establishment. In *B.B.*,[12] the Board found that the parking lot was not part of the employing establishment's premises when it could be used by the general public and was not owed, maintained or controlled by the employing establishment. These cases are distinguishable from the instant case, as the employing establishment indicated that the garage was not open to the general public and that security guards monitored the area to ensure that no one unauthorized parked there monitoring for parking decals.

In *B.I.*,[13] the Board found that a parking garage leased for and used solely by employees of the employing establishment with assigned parking permits and a shuttle was part of the employing establishment's premises. In *L.F.*[14] the employing establishment stated that it owned, controlled and managed the parking lot where the claimant fell. The employing establishment checked the parking lot for unauthorized use and paid for employee use of the lot although it did not assign parking spaces and other parking was available. Under those circumstances, the

[9] *N.D.*, Docket No. 11-1073 (issued December 28, 2011); *see Diane Bensmiller*, 48 ECAB 675 (1997); *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991).

[10] Docket No. 07-1929 (issued October 22, 2008).

[11] Docket No. 12-1849 (issued January 13, 2014).

[12] Docket No. 12-165 (issued July 26, 2012).

[13] Docket No. 12-1069 (issued January 11, 2013).

[14] *L.F.*, *supra* note 8.

Board found that the parking lot was part of the employing establishment's premises. In *P.S.*,[15] the Board found that the parking lot was part of the employing establishment's premises when it directed the claimant to park there. A portion of the lot was separated by concrete barriers for the exclusive use of employees, employees did not have to pay to park and there was no other parking area where employees were designated to park.

The Board finds that the current case falls more closely within the parameters of the above-cited cases, similar to *P.S.*[16] The evidence of record reflects that the parking garage was leased by the employing establishment for the use of employees. Appellant had a parking decal which the security guards checked to ensure that only authorized spaces were used. The employing establishment recommended that employees park there for their safety and convenience as there was limited on-street parking which was considered unsafe. Under these circumstances, the Board finds that the parking garage was part of the employing establishment premises.[17]

The mere fact that the employee was on the premises at the time of injury is not sufficient to establish entitlement to compensation benefits. It must also be established that he or she was engaged in activities which may be described as incidental to his or her employment. Appellant had fixed hours of and a fixed place of employment. Her regular work shift was from 8:00 a.m. to 4:30 p.m., but on July 5, 2012 she worked authorized overtime until 6:00 pm. The employing establishment indicated that appellant fell at 6:05 p.m. while on the grounds of the garage.

What constitutes a reasonable interval of time to arrive at or remain on the premises of the employing establishment for reasons related to work depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employment activity.[18] In *I.F.*,[19] the Board found that the claimant's presence in a parking lot 45 minutes after his dismissal was not inherently unreasonable. The Board found in *Sharon M. Henry*,[20] that as the claimant was walking down a ramp on the employing establishment premises just five minutes after the conclusion of her workday, her departure from the employing establishment premises was incidental to her employment.

The Board finds in this case, as in *Henry*, that appellant's presence in the parking garage five minutes after her overtime ended was not unreasonable. Appellant's departure from the employing establishment five minutes after her work ended occurred within a reasonable interval after the end of her work shift. In this particular instance, neither the timing of appellant's injury nor the activity of walking to her car on the employing establishment premises precludes coverage under FECA. The Board finds, therefore, that appellant has met her burden of proof to establish that her fall in the parking lot on July 5, 2012 was in the performance of duty.

[15] Docket No. 13-370 (issued November 12, 2013).

[16] *Id.*

[17] *B.I., supra* note 14.

[18] *B.B.*, Docket No. 13-1730 (issued January 13, 2014).

[19] *I.F.*, Docket No. 12-192 (issued September 26, 2013).

[20] Docket No. 05-512 (issued June 16, 2005).

On remand OWCP should evaluate the medical evidence to determine any injuries sustained as a result of appellant's slip and fall in the performance of duty on July 5, 2012.

CONCLUSION

The Board finds that appellant's slip and fall occurred in the performance of duty and remands the case for OWCP to evaluate the medical evidence to determine any employment-related injuries resulting from the July 5, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2014 decision of the Office of Workers' Compensation Programs is reversed and remanded for further development consistent with this decision of the Board.

Issued: September 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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