



## **FACTUAL HISTORY**

On November 12, 2013 appellant, then a 37-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that she slipped and fell on her back at 8:30 a.m. in parking lot "P10263" at the employing establishment that same day. She noted that the parking lot was encrusted with ice and alleged that she had a headache, upper back and neck pain as a result of her slip and fall. Appellant's regular tour of duty was 8:30 a.m. to 5:00 p.m. on Monday through Friday. The claim form included a witness statement from Fred Burleson who "saw [appellant] slip after exiting her car on the ice in the parking lot."

An OWCP (Form CA-16), authorization for examination, was issued by the employing establishment on November 12, 2013. Appellant was authorized to visit Guthrie Medical Center in Fort Drum, New York. Dr. Joshua Hardman, a Board-certified family practitioner, indicated that she "was walking to work, slipped in the parking lot [and] fell backward onto her upper back." He diagnosed lower back pain, cervicgia and headache.

Hospital records dated November 12 to 20, 2013 from Guthrie Medical Center indicate that appellant slipped and fell on ice in the parking lot while walking into work. A November 14, 2013 report stated that she "fell on black ice-at network enterprise."

In a November 20, 2013 statement, appellant indicated that she was injured at approximately 8:25 a.m. on November 12, 2013 due to a "slip and fall while walking in work parking lot on ice" at "Fort Drum Network Enterprise Center 13602."

Appellant submitted November 14, 2013 hospital records and diagnostic testing dated November 14, 2013 and January 10, 2014 from Samaritan Medical Center. She also submitted duty status reports (Form CA-17s) dated December 30, 2013 and January 20, 2014 and an electromyography and nerve conduction studies dated January 23, 2014.

In a December 2, 2013 report, Dr. Sundus Latif, a clinical neurophysiologist, indicated that appellant "fell on black ice with a resulting headache associated with blurred vision" and diagnosed postconcussive headache."

On December 3, 2013 Dr. Bruce L. Baird, a Board-certified orthopedic surgeon, indicated that appellant slipped and fell on black ice on her way into work while walking from her car into the building. He diagnosed axial neck discomfort and questioned upper extremity radiculopathy.

In a December 17, 2013 report, Dr. Abdul Latif, a Board-certified internist, diagnosed chronic headaches with improvement, chronic neck and bilateral shoulder pain, dizzy spells, chronic low back pain and lower extremity paresthesia. On January 15, 2014 he diagnosed neck pain, stable, low back pain with improvement and lumbosacral spondylosis.

On February 5, 2014 appellant filed a claim for wage-loss compensation (Form CA-7) for the period December 27, 2013 through January 23, 2014.

In a February 11, 2014 letter, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on

these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It indicated that it had reopened the claim for consideration because a claim for wage-loss compensation had been received. OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By letter dated February 11, 2014, OWCP requested that the employing establishment provide information regarding the parking lot where the injury occurred and afforded it 30 days to respond to its inquiries. The employing establishment did not respond.

By decision dated March 18, 2014, OWCP denied the claim on the basis that appellant's injury on November 12, 2013 did not arise in the performance of duty. It found that the evidence of record was not sufficient to establish that the injury occurred on premises owned or operated by the employing establishment.

### **LEGAL PRECEDENT**

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>2</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.<sup>3</sup>

In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto.<sup>4</sup>

Regarding employees having fixed hours and a fixed place of work, the Board has accepted the general rule of workers' compensation law that injuries occurring on the premises of the employing establishment, while the employees are going to and from work before or after working hours or at lunchtime are compensable.<sup>5</sup> The course of employment for such employees includes acts which minister to their personal comfort within the time and space limits of their

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<sup>2</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>3</sup> See *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>4</sup> See *R.A.*, 59 ECAB 581 (2008).

<sup>5</sup> See *F.S.*, Docket No. 09-1573 (issued April 6, 2010).

employment.<sup>6</sup> On the other hand, when a claimant departs from his or her workstation without authorization to retrieve personal items, such activity is not considered an activity necessary for personal comfort or ministrations or incidental to his or her employment.<sup>7</sup> In defining what constitutes the premises of an employing establishment, the Board has stated that the premises of the employer, as the term is used in workers' compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or more narrow and are dependent more on the relationship of the property to the employment than on the status or extent of the legal title.<sup>8</sup>

The Board has pointed out that factors which determine whether a parking area used by employees may be considered a part of the employing establishment's premises include whether the employer contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employer 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 of the employer. 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.<sup>9</sup>

### ANALYSIS

Appellant has established that she is a federal employee and that the November 12, 2013 fall occurred at a reasonable time regarding her employment since she fell immediately before her shift began at 8:30 a.m.<sup>10</sup> On appeal, she contends that she indicated on her claim form that she was injured at her work location in Parking Lot No. 10263 during work hours. The claim form included a witness statement from Mr. Burleson who "saw [appellant] slip after exiting her car on the ice in the parking lot" and the employing establishment issued an OWCP CA-16 form on November 12, 2013. The record, however, does not clearly establish that the parking lot

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<sup>6</sup> See *R.H.*, Docket No. 09-13 (issued March 6, 2009); A. Larson, *The Law of Workers' Compensation* § 21 (2007).

<sup>7</sup> See *A.K.*, Docket No. 09-2032 (issued August 3, 2010).

<sup>8</sup> See *Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004) (where the employee fell and injured her left side while walking from a parking lot to the employing establishment building on a snow-covered public sidewalk. The Board found that the employee did not establish that the sidewalk on which she fell was used exclusively or principally by employees of the employing establishment for the convenience of the employing establishment. The evidence of record supported that the sidewalk where the incident occurred was not owned, operated or maintained by the employing establishment and was open to the public. The employee's injury was found not to be in the performance of duty).

<sup>9</sup> *R.M.*, Docket No. 07-1066 (issued February 6, 2009); see *Diane Bensmiller*, 48 ECAB 675 (1997); *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991); *Edythe Erdman*, 36 ECAB 597 (1985); *Karen A. Patton*, 33 ECAB 487 (1982).

<sup>10</sup> See *D.M.*, Docket No. 10-1723 (issued August 23, 2011).

where the fall occurred was part of the employment premises. OWCP requested information from the employing establishment regarding the parking lot where the incident occurred. However, the employing establishment did not timely respond to OWCP's request. Additionally, OWCP sent a questionnaire to appellant with a series of questions relative to the parking lot. The questionnaire was not returned.

In *L.L.*,<sup>11</sup> the claimant filed a traumatic injury claim alleging that she injured her right elbow, hand and arm when she slipped in the parking lot at work at 6:47 p.m. on March 7, 2011 on an icy, snowy day. Her supervisor indicated that her duty hours were 10:15 a.m. to 6:45 p.m. Monday through Friday and that she fell as she was leaving the building after the end of her shift. He authorized medical treatment on a Form CA-16 on March 10, 2011. OWCP informed the employee of the type of evidence needed to establish her claim and asked the employing establishment to provide information regarding the parking lot where the injury occurred. Neither party timely responded to OWCP's requests. Appellant subsequently requested a review of the written record and an OWCP hearing representative again requested that the employing establishment provide information regarding the parking lot where the incident occurred. The Board found that OWCP was required to ascertain whether the parking lot was the employing establishment's premises. Although OWCP had requested information from the employing establishment on two occasions regarding the parking lot where the incident occurred, the Board held that OWCP "must again attempt to get information from the employing establishment, especially as this is not the type of information readily available to appellant."<sup>12</sup>

In the present case, OWCP requested that the employing establishment provide information regarding the parking lot where the injury occurred and afforded it 30 days to respond to its inquiries. The employing establishment did not respond. The Board finds that, as in the case of *L.L.*, OWCP must ascertain whether the parking lot where the incident occurred was the employing establishment's premises. Although it is a claimant's burden to establish her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>13</sup> Proceedings under FECA are not adversarial in nature. Once OWCP has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. It has an obligation to see that justice is done.<sup>14</sup> Thus, OWCP must again attempt to get information from the employing establishment regarding the parking lot where the incident occurred as this is not the type of information readily available to appellant.

Accordingly, the Board finds that this case is not in posture for decision and the case must be remanded to OWCP. On remand, OWCP should obtain additional information from the employing establishment regarding access, ownership and control of the parking lot where the

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<sup>11</sup> Docket No. 12-194 (issued June 5, 2012).

<sup>12</sup> *Id.*

<sup>13</sup> *See N.S.*, 59 ECAB 422 (2008).

<sup>14</sup> *See A.A.*, 59 ECAB 726 (2008).

November 12, 2013 incident occurred. After such development deemed necessary, it shall issue a *de novo* decision regarding appellant's claim.

The Board also notes that the employing establishment issued appellant a CA-16 form on November 12, 2013 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>15</sup> Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the CA-16 form. Upon return of the case record, it should further address this issue.

### **CONCLUSION**

The Board finds that this case is not in posture for decision. Additionally, on return of the record, OWCP should consider the CA-16 form issued in this case.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: September 25, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304.