United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 16-1252**
	)	**Issued: December 1, 2016**
DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICE, Window Rock, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 25, 2016 appellant filed a timely appeal from February 3 and April 29, 2016 merit decisions 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 on July 16, 2015 in the performance of duty.

FACTUAL HISTORY

On December 17, 2015 appellant, then a 54-year-old medical records technician, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2015 she fractured her right radius

[1] 5 U.S.C. § 8101 *et seq.*

at 12:20 p.m. while on a walking trail. Her duty hours were from 8:30 a.m. until 4:30 p.m. Appellant's supervisor indicated on the claim form that she was on her lunch break and not on the premises at the time the incident occurred.

OWCP on December 30, 2015 requested that appellant submit additional factual and medical information, including whether she was on the premises of the employing establishment and what she was doing at the time of her alleged injury.

In a January 21, 2016 response, appellant indicated that she was not on the premises of the employing establishment but on "a property incidental to the work site." She related, "I was taking a short break from working behind the computer all morning to walk and clear my mind to begin the second half of the day. I was injured while on the short walk outside the workplace." Appellant advised that she fractured her right wrist approximately .25 miles from her work site.

The employing establishment, by letter dated January 25, 2016, asserted that appellant's injury did not occur on its premises or in an area that it owned or operated. It submitted a map showing the hill where the incident occurred. The employing establishment further advised that appellant was not performing any official duties or an activity reasonably incidental to her work.

By decision dated February 3, 2016, OWCP denied appellant's claim as she was not in the performance of duty at the time of the alleged July 16, 2015 employment incident. It noted that her alleged injury occurred off the premises of the employing establishment at a time when she was not performing her duties or an activity reasonably incident to her work.

On March 4, 2016 appellant requested reconsideration. She asserted that she was injured during her work hours performing an activity that promoted the interest of the employing establishment. Appellant related, "The activity I was engaged in was incidental to, and aimed to promote the best performance of my assigned duty and cannot be divorced from my regularly assigned duties and the best performance of it." She maintained that the issue was not whether the trail where her injury occurred was operated or controlled by the employing establishment but whether there was a "direct correlation" between her employment and the injury. Appellant asserted, "I wouldn't be on that trail and at the hour of my injury, but for my job."

In a decision dated April 29, 2016, OWCP denied modification of its February 3, 2016 decision. It found that appellant was not engaged in an activity incidental to her employment at the time of the claimed 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

[2] 5 U.S.C. § 8102(a).

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 stated to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with the employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[4] In deciding whether an injury is covered by FECA, 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.[5]

The Board has recognized a general principle, called the premises doctrine, 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.[6]

Exceptions to the premises doctrine have been made to protect activities that are so closely related to the employment itself as to be incidental thereto,[7] or which are in the nature of necessary personal comfort or ministration.[8] The Board has also found that the 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.[9] This principle is called the proximity rule and the most common ground of extending coverage 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.[10]

ANALYSIS

Appellant alleged that she fractured her right radius when she slipped on a walking trail during a lunch break from work at 12:20 p.m. on July 16, 2015. OWCP denied her claim as her injury was not sustained in the performance of duty.

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

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

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

[6] *V.P.*, Docket No. 13-74 (issued July 1, 2013); *M.L.*, Docket No. 12-286 (issued June 4, 2012); *John M. Byrd*, 53 ECAB 684 (2002).

[7] *See Maryann Battista*, 50 ECAB 343 (1999) (activities such as delivering a bad check list and checking on a customer's telephone were incidental to employee's listed duties).

[8] *See J.L.*, Docket No. 14-368 (issued August 22, 2014).

[9] *R.O.*, Docket No. 08-2088 (issued February 18, 2011).

[10] *Shirley Borgos*, 31 ECAB 222 (1979).

In order to be covered under FECA, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment, or engaged in something incidental thereto.[11]

Appellant related that on July 16, 2015 she took a break from work in order to clear her mind after working at the computer and to prepare for the second part of the day. Her duty hours were from 8:30 a.m. until 4:30 p.m. and the incident occurred at 12:20 p.m. Appellant's supervisor advised, and appellant has not disputed that she was on her lunch break at the time of the July 16, 2015 incident. The Board thus finds that the July 16, 2015 incident occurred during appellant's lunch break.

Appellant related that the walking trail on which she fell was not part of the premises of the employing establishment. The employing establishment indicated that it did not own, operate, or control the walking trail. The Board finds that appellant, consequently, was not on the premises of the employing establishment at the time of the incident.

As noted above, off-premises injuries during a lunch break are generally not compensable.[12] The Board finds that the exceptions to this rule are not applicable in this case. There is no evidence that appellant was injured while on an emergency call, that she was traveling on the trail as part of her employment, or that she was subjected to a special hazard, inconvenience, or urgency of travel that would bring the claimed injury within coverage of FECA.[13] Instead, her excursion was personal in nature.[14]

In *J.K.*[15] a claimant was in a motor vehicle accident during his lunch break while on his way to a park to take a walk to clear his head. The Board found that the claimant's leaving his duty station during his lunch break to go for a walk to clear his head was a personal activity that occurred at a time and place when he was not engaged in employment activities. It determined that he had experienced a nonemployment-related hazard shared by the general public. Similarly, in this case appellant's claimed injury occurred away from her place of employment, at a time when she was engaged in an activity unrelated to her employment, and the incident occurred as a result of a nonemployment-related hazard shared by the general public. Consequently, she was not in the performance of duty on July 16, 2015 when she slipped on the walking trail.

On appeal appellant argues, that but for her employment, she would not have been on the walking trail. Workers' compensation, however, does not cover ever injury, illness, or mishap that might befall an employee contemporaneous or coincidental with her employment. While

[11] *B.P.*, Docket No. 14-0411 (issued July 17, 2014); *David P. Sawchuck*, 57 ECAB 316 (2006).

[12] *See J.K.*, Docket No. 15-0198 (issued March 10, 2015); *J.E.*, Docket No. 59 ECAB 119 (2007).

[13] *See E.B.*, Docket No. 06-2178 (issued February 27, 2007).

[14] *See J.K.*, *supra* note 12.

[15] *Id*.

taking a lunch break may be considered incidental to one's employment under the personal comfort doctrine, the premises rule explicitly excludes off-premises lunches from the course of employment.[16]

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on July 16, 2015 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 29 and February 3, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 1, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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