U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. KILCOYNE and GENERAL PRINTING OFFICE, Washington, D.C.

Docket No. 96-516; Submitted on the Record;
Issued August 12, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

On February 26, 1995 appellant, then a 45-year-old printer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that he strained muscles in his back, arms and neck when he slipped on ice. The employing establishment checked "yes" that appellant was injured in the performance of duty on the back of the form. The employing establishment indicated that appellant's regular work hours are from 9:00 p.m. to 5:00 a.m. On the date of the injury, appellant was working overtime according to the employing establishment. He submitted medical evidence regarding treatment received.

By letter dated April 21, 1995, the Office of Workers' Compensation Programs requested that the employing establishment provide information regarding appellant's description, his normal workday, where the injury occurred in relation to the workplace, who owned the parking facility, and whether appellant was performing his regular duties at the time of the injury. In another letter of the same date, the Office requested appellant provide factual information regarding the exact location of the injury, whether he had completed his regular duty hours, and the ownership of the parking facility.

The employing establishment responded in a memorandum dated June 6, 1995 stating that the injury occurred on General Printing Office (GPO) parking lot #16 which is owned, controlled and managed by the employing establishment. Appellant's supervisor noted that he was injured while moving his car from a public street to the GPO parking lot. In a separate memorandum dated June 9, 1995, the employing establishment noted a discrepancy in what he related to his supervisor and another statement as to where appellant's automobile was parked on the day of the injury. The employing establishment also noted that appellant was not in the parking program and his car was not parked on any employing establishment lot the night or the morning of the injury. In a memorandum dated June 23, 1995, the employing establishment

stated that appellant worked an additional five hours of overtime on the date of the accident and that appellant was given permission to leave the building to move his car to another location to avoid the car being ticketed or towed.

By decision dated June 30, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to demonstrate that the claimed injury on February 26, 1995 was sustained in the performance of his federal duties.

On June 10, 1995 appellant requested reconsideration of the denial of his claim.

In letters dated July 28 and August 3, 1995, the Office requested appellant to clarify where he fell and exactly where he parked his car after moving the car from public parking on Massachusetts Avenue. The Office also requested appellant to indicate if he moved his car to GPO lot #16 and if he had a parking permit.

In a letter dated August 17, 1995, appellant stated that at the time of the accident he was walking across GPO lot #16 to move his automobile, which was parked on Massachusetts Avenue, to "G" Street. Appellant stated that he was halfway across the lot when he fell. Appellant enclosed GPO regulations which state that employees are permitted up to 20 minutes to reposition their transportation.

In a decision dated October 3, 1995, the Office found the evidence submitted by appellant insufficient to warrant modification of the prior decision. The Office found that appellant's activity of moving his car was not "incidental" to his employment. The Office specifically found that appellant's moving his car was in the nature of a personal convenience and thus was not incidental to his employment even though he was on the employing establishment's premises when he slipped.

The Board finds that the case is not in posture for a decision.

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 an employee/employer relation.[1] Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." As to the phrase "in the course of employment," the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, 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 lunch time, are compensable.[3] Given this rule, the Board has also noted that

[1] *Christine Lawrence*, 36 ECAB 422-24 (1985).

[2] *See* 5 U.S.C. § 8102(a).

[3] *See Margaret Gonzalez*, 41 ECAB 748, 751-52 (1990).

the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts, and that what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee's activity.[4]

Under certain circumstances, a parking lot for the use of employees may be considered a part of the employment premises. Factors bearing on this determination are 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 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 employing establishment. The premises doctrine is applied to those cases where it is affirmatively demonstrated that the federal employer owned, maintained, or controlled the parking facility, used the facility with the owner's permission, or provided parking for its employees.[5]

In this case, the evidence shows that appellant fell while he was walking across GPO lot #16 to move his automobile which was parked on Massachusetts Avenue, to "G" Street. The record, however, does not contain any evidence as to whether the GPO lot #16 was owned and maintained by the employing establishment or whether the public was permitted to use or traverse the lot. The record does indicate that the lot was available to employees if they purchased a parking ticket. The Board finds that the record needs further factual development to determine whether appellant's fall at GPO parking lot #16 comes within the definition of "premises" of the employing establishment. On remand, the Office should determine whether all of GPO lot #16 was set aside for employees of the employing establishment, whether appellant moved his car into GPO lot #16 from where it was parked on Massachusetts Avenue, whether the public was permitted to use the lot, and the location of the lot with respect to appellant's work building. The Office should further develop the record as necessary.

[4] *Narbik A. Karamian*, 40 ECAB 617, 618 (1989)

[5] *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991); *Edythe Erdman*, 36 ECAB 597 (1985).

The decisions of the Office of Workers' Compensation Programs dated October 3 and June 30, 1995 are set aside and the case remanded for further proceedings in accordance with this decision of the Board.

Dated, Washington, D.C.
August 12, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member