

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NORMA H. GODIER and DEPARTMENT OF THE ARMY,  
ARMY RECRUITING CENTER, Denver, CO

*Docket No. 01-78; Submitted on the Record;  
Issued July 17, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained injury while in the performance of duty.

On October 27, 1999 appellant, then a 67-year-old secretary, was walking to the employing establishment when she tripped on an uneven sidewalk slab and fell, sustaining fractures of both patellae, an injury to her arm and contusions of the face. In a December 8, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she was not injured in the performance of duty. Appellant requested a hearing before an Office hearing representative, which was conducted on July 10, 2000. In a September 7, 2000 decision, the Office hearing representative found that appellant was not injured in the performance of duty because she was not injured on the premises of the employing establishment.

The Board finds that appellant was not injured while in the performance of duty.

The Federal Employees' Compensation Act<sup>1</sup> 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."<sup>2</sup> In deciding whether an injury is covered by the Act, the test is whether there exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.<sup>3</sup> The Board has stated as a general rule that off premises injuries sustained by employees having fixed hours and place of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Conrad F. Vogel*, 47 ECAB 358 (1996).

travelers.<sup>4</sup> This rule also applies where an employee is coming to his or her permanent duty station before work or leaving the permanent duty station after work and is injured in an area adjacent to the employing establishment where he or she worked, but which is not owned or controlled by the federal government.<sup>5</sup>

In defining what constitutes the premises of an employing establishment, the Board has said:

“The ‘premises’ of the employer, as the term is used in workmen’s compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of the legal title.”<sup>6</sup>

The evidence of record shows that appellant has fixed hours of work and was walking to the employing establishment when she fell. Her status, therefore, was that of a “fixed premises” employee who, is subject to the “going and coming” rule generally applicable to such employees. The employing establishment was located in three floors of a building that were leased from a private owner. Appellant acknowledged that the building was not owned or operated by the federal government. She noted that, after her injury, the sidewalk was repaired by the owner of the building, not the federal government. At the time of the injury, appellant had not begun her scheduled workday and was not on the premises of the employing establishment. Therefore, it cannot be found that the injury occurred on the premises of the employing establishment.

Under the facts of this case, it also cannot be said that appellant’s injury occurred on the constructive premises of the employing establishment. The Board has determined that under certain circumstances, the employment premises may be constructively extended to hazardous conditions, which are proximately located to the premises and, therefore, may be considered as hazards of the employing establishment. The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.<sup>7</sup> In this case, appellant has not shown that the sidewalk was used exclusively or principally by employees of the employing establishment for the convenience of the employer.<sup>8</sup> The employing establishment did not own the sidewalk and was not responsible for the maintenance of the sidewalk. Thus appellant’s injury is considered to be an ordinary, nonemployment hazard of the journey to work itself, shared by all travelers.<sup>9</sup> The case record does not establish that the sidewalk used by appellant was so connected with the employing establishment as to be considered part of the premises of the employing establishment. Therefore, appellant has not established that she sustained an injury in the performance of duty.

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<sup>4</sup> *Robert F. Hart*, 36 ECAB 186 (1984); *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

<sup>5</sup> *Randi H. Goldin*, 47 ECAB 708 (1996).

<sup>6</sup> *See Conrad F. Vogel*, *supra* note 3.

<sup>7</sup> *William L. McKenny*, 31 ECAB 861 (1980).

<sup>8</sup> *Mary Keszler*, 38 ECAB 735 (1987).

<sup>9</sup> *Shirley Borgos*, 31 ECAB 222 (1979).

The decisions of the Office of Workers' Compensation Programs, dated September 7, 2000 and December 8, 1999, are hereby affirmed.

Dated, Washington, DC  
July 17, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member