United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
	)	
and	)	**Docket No. 06-2178**
	)	**Issued: February 27, 2007**
HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Jamaica, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2006 appellant filed a timely appeal of a September 15, 2006 decision of the Office of Workers' Compensation Programs that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was injured in the performance of duty on May 15, 2006.

FACTUAL HISTORY

On May 17, 2006 appellant, then a 50-year-old customs technician, filed a claim for compensation for a traumatic injury sustained on May 15, 2006 at 11:40 a.m.[1] She claimed that

[1] The employing establishment indicated that appellant's regular work hours were from 7:00 a.m. to 3:30 p.m.

she tripped over a brick and fell at the security booth of a parking lot while going to the credit union in the Federal Aviation Administration complex during her lunchtime. Appellant's supervisor checked a box on the form to indicate that appellant was not considered to be in the performance of duty when the injury occurred. The record indicates that appellant worked at JFK International Airport, Building 77, Jamaica, NY 11430 and that her claimed injury occurred at 159-30 Rockaway Boulevard, Jamaica, NY 11434. Appellant was taken by ambulance to the hospital where she received 14 stitches to her forehead and was diagnosed with contusions to her nose, left knee and right wrist. She stopped work on May 15, 2006 and returned on or about September 5, 2006. In support of her claim, appellant submitted treatment and disability reports from Dr. David N. Lifschutz, a neurologist, who indicated that appellant had post-traumatic headache syndrome, postconcussive syndrome, post-traumatic rotational vertigo, post-traumatic weakness of the left occipitofrontalis muscle, right wrist strain and left knee internal derangement as a result of the May 15, 2006 incident.

By letter dated August 7, 2006, the Office advised appellant of the factual and medical evidence needed to establish her claim. In an August 8, 2006 telephone call to the Office, as well as in an August 15, 2006 letter, appellant related that the injury occurred during her lunch hour and she was not on the property of the employing establishment. However, she asserted that she was in the performance of duty at the time of the accident because she would not be on lunch if she was not at work. Additional reports from Dr. Lifschutz were received.

By decision dated September 15, 2006, the Office denied appellant's claim. It found that she was not injured in the performance of duty as the May 15, 2006 incident occurred off the employing establishment's premises during her lunch break.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] 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.[3] In deciding whether an injury is covered by the Act, 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.[4] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.[5] The phrase course of employment is recognized as relating to the work situation

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

[4] *Julian C. Tucker*, 38 ECAB 271, 272 (1986).

[5] *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

and more particularly, relating to elements of time, place and circumstance. In addressing this issue, the Board has stated the following:

> "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 his or her 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 his or her employment or engaged in doing something incidental thereto.[6]"

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, 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 travelers.[7] When an employee has a definite place and time for work and the time for work does not include the lunch period, the trip away from and back to the premises for the purposes of getting lunch is indistinguishable in principle from the trip at the beginning and end of the workday and is governed by the same rules and exceptions.[8] Exceptions to the general rule have been made in order to protect activities that are so closely related to the employment itself as to be incidental thereto[9] or which are in the nature of necessary personal comfort or ministration.[10]

ANALYSIS

The facts in this case are not in dispute. Appellant's May 15, 2006 injury occurred off the employing establishment's premises during her lunch period at 11:40 a.m. when she was on a personal errand to her credit union. She had fixed hours of work from 7:00 a.m. to 3:30 p.m. There is no indication that appellant was engaged in any employment duties or any task

[6] *Mary Keszler*, 38 ECAB 735, 739 (1987). 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. *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[7] *Mary Keszler supra* note 6 at 739, 740.

[8] *Cheryl Bowman*, 51 ECAB 519 (2000); *Donna K. Schuler*, 38 ECAB 273, 274 (1986); A. Larson, *The Law of Workers' Compensation* § 13.05 (2004).

[9] The Board has stated that these exceptions are dependent upon the particular facts and related situations: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer. *Betty R. Rutherford*, 40 ECAB 496, 498-99; *Lillie J. Wiley*, 6 ECAB 500, 502 (1954).

[10] *See, e.g., Harris Cohen*, 8 ECAB 457 (1954) (accident occurred while the employee was obtaining coffee); *Abraham Katz*, 6 ECAB 218, 218-19 (1953) (accident occurring while the employee was on the way to the lavatory).

incidental to her employment when she was injured. Rather, she was off-premises going to her credit union. Because appellant was not on the employment premises when injured during her lunch break, the general going and coming rule would apply unless it is established that one of the exceptions to the general rule applies to the circumstances in this case.

Under the facts of this case, it cannot be said that appellant's injury would fall within any of the exceptions to the general rule regarding off-premises injuries. There is no evidence that she was injured while on an emergency call, while she was traveling on the road as part of her employment, or subjected to a special inconvenience, hazard or urgency of travel that would bring it within coverage of the Act.[11] Appellant's reason for leaving the employing establishment premises to go to the credit union was personal in nature. Her claimed injury occurred away from her place of employment while she was engaged in nonemployment activities and represented a nonemployment hazard, which was shared by the general public. Appellant was not in the performance of duty when injured on May 15, 2006 as she failed to establish that the injury arose out of and in the course of her employment.

Appellant has alleged that her injury should be compensable because if she were not at work, she would not have been at lunch. As noted, her injury did not occur on the employing establishment's premises and none of the exceptions to the going to or coming from work apply in her case. Appellant's journey was personal in nature. Her injury is the result of the common perils of the journey itself, which are shared by all travelers.[12] Being at lunch does not make the risk involved in traversing the public streets incidental to her employment.[13]

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on May 15, 2006.

[11] *See Phyllis A. Sjoberg*, 57 ECAB ___ (Docket No. 06-144, issued February 8, 2006).

[12] *See Jon Luis Van Alstine*, 56 ECAB __ (Docket No. 03-1600, issued November 1, 2004); *see also Linda S. Jackson*, 49 ECAB 486 (1998).

[13] *See Linda Christian*, Docket No. 06-566 (issued May 4, 2006).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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