United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 07-1759**
	)	**Issued: February 27, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Sheridan, WY, Employer	)	

Appearances:
Randy D. Wilson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal from the April 19, 2007 decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 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 has established that she sustained a traumatic injury in the performance of duty on February 22, 2007. On appeal, she contends that she was on the employing establishment premises at the time of her fall because the employing establishment derived benefits from her employee housing and because she was outside the house when she fell.

FACTUAL HISTORY

On March 6, 2007 appellant, then a 55-year-old fiscal accountant's assistant, filed a traumatic injury claim, Form CA-1, alleging that she fractured her left wrist and forearm when

she slipped on ice on the stairs to her quarters on February 22, 2007. The employing establishment controverted her claim stating that she was not on the employing establishment's premises and not involved in official duties when she slipped on the front steps of her employee housing. It indicated that employees were responsible for clearing the walkways of their own quarters.

On March 14, 2007 the Office requested additional information from both appellant and the employing establishment about the ownership and management of appellant's residence and her medical condition.

In a letter dated March 12, 2007, the employing establishment stated that appellant lived in quarters on the employing establishment grounds. Appellant was not required to live in the quarters and the housing was not associated with her position. The opportunity to rent housing owned by the employing establishment was a benefit available to all Federal Government employees moving into the area. The employing establishment provided a copy of the Assignment of Quarters Agreement for Quarters No. 10, signed by appellant's husband, who was also employed by the employing establishment.[1] The lease gave the facility management service of the employing establishment the right to conduct inspections, including annual interior inspections and periodic exterior inspections and the obligation to make repairs. Appellant and her husband had the responsibility of shoveling sidewalks and maintaining the yard. The lease stated:

> "The quarters are a sizable part of the Sheridan VA Medical Center and their appearance helps to create a favorable or unfavorable impression on the public. As a federal health care facility, we have a responsibility to patients and visitors to maintain all areas in a clean, safe and orderly manner. Quarters occupants share in the responsibility for keeping both exterior and interior areas in a reasonable condition."

On March 9, 2007 Dr. James Ferries, a Board-certified orthopedic surgeon, stated that appellant was doing well following the open reduction internal fixation surgery for her comminuted left distal radius fracture. He stated that she had maintained the alignment of the bone which was a very good sign, given the nature of the fracture. On March 30, 2007 Dr. John Ritterbusch, a Board-certified orthopedic surgeon, indicated that a voler plate had been placed in appellant's left arm to treat her comminuted wrist fracture. He removed her short arm cast, fitted her with a removable wrist splint and prescribed physical therapy. Dr. Ritterbusch stated that she may be able to return to work in a part-time capacity at the end of the following week.

On April 2, 2007 appellant stated that she left her residence between 7:05 and 7:10 a.m. on February 22, 2007 so that she could open the payment window where she worked by 7:30 a.m. Her workplace was less than a city block from her residence and walking from the front porch was the most direct route to the building where she worked. Appellant's house was closer to her office than the employee parking lot. On the front steps of the house, she lost her balance and fell forward, catching herself with her hands. Appellant did not realize that she was injured

[1] The Board notes that the agreement, signed on January 17, 2006 was for the period of one year. The record does not contain a copy of the lease operative on February 22, 2007.

until she walked to her office and noticed that her left wrist was swelling. The employing establishment physician recognized the seriousness of her condition and sent appellant to the emergency room where she underwent surgery the same day.

Appellant stated that the CA-1 form dated March 6, 2007 had been completed by the employing establishment on her behalf. She indicated that it was not filled out correctly because she never told anyone that she slipped on ice. Appellant's husband kept the sidewalk, steps and porch clear of snow and ice by using a deicer regularly. The day of the accident, the steps were clear and dry. She fell because there was no handrail on the wooden steps, which were not very solid because of neglect, age and weather. The chief engineer of the employing establishment had been notified of the need for repairs on the porch steps, rain gutter, outside walkways, windowpanes and windows, but had not taken any steps to repair them.

On April 4, 2007 the employing establishment stated that its facility sat on a former military compound and covered approximately 300 acres. The grounds contained 66 buildings, 23 of which were residential housing units that were maintained for employees who were moving into the area and chose to live there. On the day in question, appellant reported to work with her wrist condition and was taken to the employee health unit when she was unable to continue working. The employing establishment further stated that appellant's supervisor and the workers' compensation claims specialist were both told that appellant slipped on ice on the steps of her house.

On February 22, 2007 Dr. John Carmen, a physician at the employing establishment, stated that appellant slipped on some ice in the parking lot and sustained a Colle's fracture to the left wrist. In an addendum, he stated that she did not injure herself on the parking lot as he was initially told, but on the front steps of her house.

By decision dated April 18, 2007, the Office denied appellant's claim on the grounds that she was not injured in the performance of duty.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against each and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not attach merely upon the existence of an employee/employer relation.[2] In the Federal Employees' Compensation Act,[3] 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. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law of "rising out of and in the course of employment."[4] In addressing this issue, the Board has stated that it is generally held that an

[2] *Bruce A. Henderson*, 39 ECAB 692 (1988); *Minnie M. Huebner*, 2 ECAB 20 (1948).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Timothy K. Burns*, 44 ECAB 125 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while the employee is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment or the risk is incidental to the employment or to the conditions under which the employment is performed.[5]

Under the Act, an injury sustained by an employee, having fixed hours and place of work, while going to or coming from work is generally not compensable because it does not occur in the performance of duty. However, many exceptions to the rule have been declared by courts and workers' compensation agencies. One such exception almost universally recognized is the premises rule: an employee going to or coming from work is covered under workers' compensation while on the premises of the employer. This exception includes a reasonable interval before and after official working hours while the employee is on the premises engaging in preparatory or incidental acts.[6] What constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and nature of the employment activity. The mere fact that an injury occurs on the premises of the employer within a reasonable interval before or after working hours is not sufficient to bring the injury within the performance of duty. The employee must also show that the injury resulted from some risk incidental to the employment and that the employing establishment received some substantial benefit from the activity involved.[7]

As used in workers' compensation law, the term "premises" is not synonymous with the term "property," as it is not solely dependent on ownership. The Board has held that the premises of the employer 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.[8]

ANALYSIS

The issue to be determined is whether appellant was in the performance of duty when she fell on the steps of Quarters No. 10 on the morning of February 22, 2007.

There is no dispute that appellant was on her way to work when she fell on the steps of her rented house injuring her wrist. As discussed above, the premises rule holds that an employee who is going to work is in the performance of duty if she is on the employing establishment's premises within a reasonable period before her duties begin and her actions are incidental to her employment. The Board notes that appellant's fall occurred at 7:05 or 7:10 a.m., which is a reasonable amount of time before her duties began, given that she needed to

[5] *Angela J. Burgess*, 53 ECAB 568 (2002); *Barbara D. Heavener*, 53 ECAB 142 (2001).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Industrial Premises, Chapter 2.804.4(a)(3) (August 1992).

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

[8] *A.M.*, 58 ECAB ___ (Docket No. 06-1472, issued April 25, 2007); *Denise A. Curry*, 51 ECAB 158 (1999).

prepare to open her window at 7:30 a.m. There is no evidence that appellant was engaged in any other activity than going to work which the Board has held to be incidental to employment.[9] Having determined that her actions met the requirements of "going to work," the Board must now determine whether appellant was on the premises of the employing establishment at the time of her fall.

The employing establishment facility covers approximately 300 acres and contains 66 buildings. Twenty-three of these buildings are residential housing units that the employing establishment maintains for employees who are transitioning into the area and chose to live there. The record establishes that appellant and her husband rented Quarters No. 10 from the employing establishment. The lease agreement in effect at the time of appellant's fall is not in the record. However, as it has not been argued that appellant did not have a right to occupy Quarters No. 10, the Board will presume that the terms of the subsequent lease were identical to those in the record. Under the terms of the lease, appellant and her husband were responsible for maintenance of the lawn and snow removal from the steps and walkways. The employing establishment reserved the right to conduct annual interior inspections and periodic exterior inspections and was responsible for general maintenance of the interior and exterior structure.

In previous cases, the Board has found several instances in which thoroughfares and nonworksite buildings on the employer's property were part of the employer premises for purposes of workers' compensation.[10] However, the fact that an area or building is owned by the employing establishment is not enough, by itself, to make it part of the premises of the employing establishment.[11] When determining whether a particular area is part of the employer's premises, the relationship of the property to the employment is more important than the ownership of the property.[12]

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[9] *See Diane Bensmiller*, 48 ECAB 675 (1997) ("the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours of places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours or at lunch time, are compensable").

[10] *Anneliese Ross*, 42 ECAB 371 (1991) (streets of military base were employer premises where employee was driving home from work); *Hope J. Kahler*, 39 ECAB 588 (1988) (government owned street between employee parking lot and building entrance was employer premises where employee was leaving work or returning from lunch); *Nona J. Noel*, 36 ECAB 329 (1984) (nonommissioned officers' club on military base was on employer premises, though employee was not in the performance of duty); *Emma Varnerin, M.D.*, 14 ECAB 253 (1963) (steps of dormitory on hospital grounds were on employer premises where employee walked to work); *JoAnn Curtis*, 38 ECAB 122 (1986) (hospital parking lot on military base was on employer premises, though employee was not in performance of duty); *John F. Castro*, Docket No. 03-1653 (issued May 14, 2004) (streets of military base are employer premises where employee was driving home from work). *CF. Barbara Roy*, 42 ECAB 960, n.9 (1991) (where employee fell in bathroom of an employee club on base, the Board declined to discuss whether "the premises should be considered to be only the building where appellant worked or included all property within the boundaries of the employing establishment").

[11] *A.M., supra note 8* (sidewalk owned by employing establishment and fronting the building where appellant worked was not "premises" because it was a public thoroughfare); *Dollie J. Braxton*, 37 ECAB 186 (1985) (sidewalk owned by the employing establishment in front of another facility of the employing establishment was not "premises").

[12] *Id.*

In *Emma Varnerin, M.D.*,[13] the Board addressed a situation similar to appellant's, in which an employee was injured while walking from her living quarters on one part of the employing establishment's grounds to the building where she worked, on another part. The employee, who rented a room in the nurses' home, slipped on the icy steps of her dormitory while walking out of the building to work. In discussing the case, the Board stated:

> "Regardless of whether she lived on the hospital grounds merely for her own convenience, the Board finds that appellant was in the course of her employment after she left her room in the nurses' home on the employer's premises to go to work. [Appellant] had left what is properly called her living quarters and was walking on Government property toward that portion of the property where her duties were to be performed. She must be treated no differently than an employee living off the premises who enters into the performance of duty when she reaches the property of the establishment on her way to work. Thus, the accident here occurred while in the performance of duty."

The Board drew a distinction between the employee's living quarters and the rest of the employing establishment's property when determining whether appellant's fall occurred on the "premises." This follows the general principle that, with some exceptions, actions taken by an employee at her residence are not covered by the Act.[14] Though the rest of the employing establishment's grounds were "premises" for the purpose of appellant's walk to work, her living quarters were not. In finding that the employee was in the course of duty only "*after* she left her room in the nurses' home" (emphasis added), the Board indicated that the employing establishment's ownership of the room in which the employee lived did not change its status as her residence. Likewise, in this case, the Board finds that the employing establishment's ownership rights over appellant's living quarters did not alter the fact that, for purposes of workers' compensation, Quarters No. 10 served primarily as appellant's residence. As such, it cannot be considered as the premises of the employing establishment unless it had some other relation to appellant's employment.

Appellant argues that the employing establishment received several benefits from the employee's housing, including the ability to recruit employees to a geographically isolated and high-cost area and the convenience of having employees nearby in times of inclement weather. The fact that the employing establishment received some general benefit from the employee's quarters does not mean that the housing was related to appellant's federal employment. Similarly, the employing establishment's obligations related to appellant's residence, including the responsibility for its general maintenance, are related to its ownership of the property rather than appellant's employment or job duties.[15] The Board finds that, because appellant has

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[13] *Supra* note 10.

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992) ("[o]rdinarily, the protection of the [Act] does not extend to the employee's home").

[15] The employing establishment's potential liability under the Federal Tort Claims Act (FTCA) is unrelated to appellant's qualification for workers' compensation benefits. *See Denise A. Curry*, *supra* note 8 ("[w]hile the employing establishment's responsibility to clear the sidewalk may subject it to tort liability under the FTCA, this responsibility does not make the sidewalk part of the employing establishment's premises").

presented no evidence that her rented house played a role in her duties as a fiscal accountant's assistant, she has not established that her living quarters were related to her employment.

Appellant contends that she was on the employing establishment premises as soon as she stepped outside of her rented house. Unlike the situation in *Emma Varnerin, M.D.*, which involved a single room in a shared building, it appears from the record that the lease for Quarters No. 10 covered both the house and the yard. The Board notes that, under the lease, appellant and her husband shared in the responsibility for keeping the house and yard associated with Quarters No. 10 in a "clean, safe and orderly manner" and had the obligation of maintaining the yard and the walkways. At the time of her fall, appellant had not walked out of her yard to enter onto the common areas of the employing establishment's larger grounds. The Board therefore finds that appellant was still within her living quarters at the time of her fall.

The Board therefore finds that appellant was not on the employer premises when she fell on the steps of her residence on February 22, 2007.

CONCLUSION

The Board finds that appellant has not established that she sustained a traumatic injury in the performance of duty on February 22, 2007 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 19, 2007 is affirmed.

Issued: February 27, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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