United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 09-1432**
	)	**Issued: February 3, 2010**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
John C. Mullaney, Esq., 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 18, 2009 appellant filed a timely appeal from a January 28, 2009 merit decision of the Office of Workers' Compensation Programs affirming a June 4, 2008 merit decision. 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 was in the performance of duty at the time of her February 22, 2008 injury.

FACTUAL HISTORY

On March 7, 2008 appellant, a 59-year-old remittance research technician, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2008, she sustained a left arm and shoulder injury when she fell in the employing establishment's parking lot. She alleged that she was cleaning snow off her car when she slipped and fell backwards. Appellant had undergone shoulder surgery, a hemiarthroplasty, on September 19, 2007 and because of this

nonindustrial shoulder condition, she alleged that she could only remove a little of the snow at a time and therefore had to perform this snow cleaning task on an hourly basis. Appellant's supervisor reported that the parking lot in question was owned, maintained and controlled by the employing establishment. She also stated that appellant was on her lunch hour at the time of the incident and that cleaning the snow from her car was in no way one of appellant's official duties.

Appellant submitted notes excusing her from work and a March 24, 2008 note in which Dr. Steven Alter, a Board-certified orthopedic surgeon, reported appellant sustained a bruised shoulder after falling in a parking lot. Dr. Alter released appellant from work for three weeks.

On April 17, 2008 Dr. Alison Miller, an orthopedist, reported findings on examination and diagnosed "pain due to trauma, acute."

On April 30, 2008 Dr. Miller diagnosed frozen shoulder syndrome. Appellant submitted reports from a physical therapist.

By decision dated June 4, 2008, the Office accepted that appellant fell in the parking lot while cleaning snow off her car as alleged but denied the claim because appellant had not established that her alleged injury occurred in the performance of duty.

On July 1, 2008 appellant requested an oral hearing.

At a hearing, conducted October 30, 2008, appellant's attorney testified that it was an "accepted practice" for appellant to brush the snow off her car periodically during the day. Counsel reported that there was heavy snow fall on February 22, 2008. He testified that appellant's supervisor encouraged her to come to work. Counsel testified that appellant was one of only three employees that came to work on February 22, 2008 because of the snow. He testified that appellant told him that her supervisor authorized her to go out and clean the snow off her car. Counsel testified that if appellant did not perform this task periodically the snow accumulating on her car would be too heavy for her to remove because of her shoulder condition. He testified that appellant's "manager" knew this. On February 22, 2008 appellant had brushed the snow off her car three times before she fell. It was during the fourth snow cleaning, around 12:30 p.m., that she fell. Counsel testified that the snow caused appellant's fall and that she was "severely hurt." Appellant described the events of February 22, 2008 and her employment duties. Counsel argued that the fact that appellant may have been on her lunch break was irrelevant because her injury occurred on the employing establishment's premises.

By decision dated January 28, 2009, the Office affirmed its June 4, 2008 decision. It accepted that appellant fell in the employing establishment's parking lot but denied the claim because appellant was not involved in her regular, assigned employment duties at the time the incident occurred.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The

[1] 5 U.S.C. § 8102(a).

phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of performance.[2] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration. Course of employment relates to the elements of time, place and work activity: the injury must occur at a time when the employee may reasonably be said to be engaged in her employer'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 doing something incidental thereto.[3]

As to employees having fixed hours and a fixed place of work, injuries occurring on the premises while they are going to and from work before or after working hours or at lunchtime are compensable.[4] The course of employment for such employees embraces a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts. 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.[5]

ANALYSIS

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

On appeal, appellant argues that her injury occurred in the performance of duty because it occurred in the employing establishment's parking lot, on premises, during a lunch break. The Board notes that the Office did not deny appellant's claim because the incident did not occur on premises, rather the Office denied the claim on the grounds that appellant was not engaged in the employing establishment's business or in the duties she was employed to perform.[6]

The Board finds that appellant was engaged in an act reasonably incidental to personal comfort, at the time of the incident. The fact that appellant, for her convenience, used a portion of her lunch hour to walk to her personal vehicle, which was also located on government property, in order to clean snow from her car, does not take her injury outside the performance of duty.[7] It is well established that employees who, within the time and space limits of their

[2] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] *Emma Varnerin, M.D.*, 14 ECAB 253, 254 (1963); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation*, Chapter 13 (June 2006).

[5] *Nona J. Noel*, 35 ECAB 439 (1983); Larson § 21.06.

[6] *Jeremiah Bowles*, 38 ECAB 652 (1987); *Christine Lawrence*, 36 ECAB 422 (1985).

[7] Federal (FECA) Procedure Manual, Part 2 -- Performance of Duty, *Industrial Premises*, Chapter 2.804.4(a) (October 2005).

employment, engage in acts which minister to their personal comfort or convenience do not leave the course of employment.[8] The Office procedure manual provides that injuries arising on the premises may be approved if the employee was engaged in activity reasonably incident to the employment, such as personal acts for the employee's comfort, convenience and relaxation; eating meals and snacks on the premises or taking authorized coffee breaks.[9] The Board has held that it is certainly reasonable that appellant might walk to her vehicle during her lunch hour for any number of reasons that would not take her activities outside the performance of duty.[10] The Board finds that appellant's action of walking to her personal vehicle to clean off snow, while on lunch, is within the ambit of what is deemed reasonable, even absent authorization by her supervisor.[11]

Appellant has met her burden of proof to establish that she was in the performance of duty on February 22, 2008 at the time of the accepted incident. The case is remanded to the Office for development of the medical evidence.

CONCLUSION

Appellant was in the performance of duty at the time of her February 22, 2008 incident.

[8] A. Larson, *The Law of Workers' Compensation* § 5.00.

[9] *Supra* note 7.

[10] *T.L.*, Docket No. 07-1692 (issued June 2, 2008).

[11] *See Annette Stonework*, 35 ECAB 306 (1983) (where the Board held that appellant's use of a portion of her lunch hour to purchase stamps for her personal use from a postal facility on the premises of the employing establishment did not take her injury outside the performance of duty); *see also C.S.*, Docket No. 06-1121 (issued August 22, 2006) (where appellant was injured on the employing establishment premises on her way to a credit union while on her break, the Board found that this personal convenience was reasonably incidental to her employment and, therefore, compensable).

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2009 and June 4, 2008 decisions be set aside and the case remanded to the Office of Workers' Compensation Programs for development of the medical evidence.

Issued: February 3, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board