United States Department of Labor
Employees' Compensation Appeals Board

I.F., Appellant	)	
and	)	**Docket No. 09-1452**
	)	**Issued: February 22, 2010**
DEPARTMENT OF THE INTERIOR, U.S. FISH & WILDLIFE SERVICE, Elizabeth, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2009 appellant timely appealed the February 17, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on July 2, 2004.

FACTUAL HISTORY

Appellant, a 57-year-old former wildlife inspector, filed a traumatic injury claim (Form CA-1) on July 20, 2005 for a neck and lower back injury that allegedly occurred on

July 2, 2004.[1] She claimed to have been injured in the "parking lot" at 1210 Corbin St. while loading the trunk of her car with work materials weighing in excess of 30 pounds. Appellant stated that she planned to review the materials over the July 4th holiday weekend.

The employing establishment challenged appellant's claim on the basis that she was not in the performance of duty at the time of the alleged injury. Appellant's regular tour of duty was 8:00 a.m. to 4:30 p.m., Monday through Friday, and the injury reportedly occurred at 3:15 p.m. But on Friday, July 2, 2004 all employees were given administrative leave at 2:30 p.m. due to the upcoming 4th of July holiday weekend. According to the employing establishment, appellant was neither on duty nor performing functions required by the job when she allegedly injured her neck and lower back at 3:15 p.m.

In an August 16, 2006 statement, appellant indicated that she had asked her supervisor, Laurel Zitowsky, if she could remain at work after the 2:30 p.m. early dismissal. Ms. Zitowsky denied the request, and according to appellant, she was "promptly ordered out of the office" on July 2, 2004. Appellant stated that she then organized and packed her notes and materials for the July 4th weekend. She made a few trips to her car, but did not recall the exact number. It was during the final trip that she reportedly attempted to lift a portable, wheeled cart loaded with materials into her car trunk, thus injuring her neck and back. After further development of the record, the Office issued a July 17, 2008 decision denying appellant's traumatic injury claim.[2] It noted that appellant claimed to have injured herself at 3:15 p.m., which was 45 minutes past the time all employees were dismissed from duty on July 2, 2004. The Office explained that "45 minutes was not a reasonable amount of time to remain on the ***employer's premises***" absent evidence that appellant was either authorized to do so or that she was engaged in essential work activities. It found that appellant had been directed by her supervisor to leave the premises at 2:30 p.m. Additionally, the Office found that appellant had not established that she was "performing an essential element or a required task of [her] job." It stated that it had not been established that appellant was "required to take work home."[3]

Appellant requested a hearing, which was held on November 20, 2008. She submitted, *inter alia*, an August 23, 2004 sworn statement indicating that on July 2, 2004, she exacerbated a

[1] Appellant previously injured her neck in a June 11, 1993 motor vehicle accident. She also has an accepted occupational disease claim for aggravation of cervical and lumbosacral spondylosis, which arose on or about July 18, 2000 (xxxxxx049). Appellant last worked for the employing establishment on July 2, 2004. She was later granted a disability retirement effective October 8, 2004.

[2] The claim was initially denied by decision dated January 4, 2006. However, this decision was subsequently vacated and the case remanded for further development.

[3] In her August 16, 2006 statement, appellant indicated that she regularly took work home, in the form of notepads and notebooks, in order to recopy and file new information into her personal reference manuals. She explained that she was a copious note taker due to what she characterized as a "learning problem" and "significant memory impairment." Appellant would then transcribe her various work notes at home because she reportedly "was not provided time at work for this purpose." She also stated that she was unaware of the necessity of informing her supervisor when she was taking material home for review and compilation of her reference manuals.

neck and back injury previously sustained at work on February 12, 2004.[4] The July 2, 2004 exacerbation was reportedly the result of appellant's participation in a five-hour meeting that reportedly ended at 1:30 p.m. She claimed that sitting in a stationary position for five hours caused a compression of her spine and resultant pain.

Appellant also attributed her claimed recurrence to "packing and transporting work materials (notebooks, manuals) to [her] car to review over the long weekend." This latter incident occurred at approximately 2:30 p.m. Appellant provided a list of the "personal work-related" items she reportedly took home for review over the 4th of July weekend. There was also a picture of the wheeled cart she allegedly used to transport these items to her personal vehicle.

By decision dated February 17, 2009, the hearing representative affirmed the July 17, 2008 denial of appellant's claim, but for a different reason. The hearing representative accepted that appellant was loading paperwork into her car, however, she found that the evidence did not support that appellant sustained a twisting injury or that she lifted a loaded cart into the trunk of her vehicle. The hearing representative further indicated that appellant had been told she could not work after 2:30 p.m., and that she was to have left the office 45 minutes prior to the claimed injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act 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."[5] In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in her master'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.[6] For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.[7] Coverage also extends to a "reasonable interval" before or after the work shift while the employee is on the premises and engaged in preparatory or incidental acts.[8] But the mere fact that an injury occurs on the employing

[4] Appellant's claim for an alleged February 12, 2004 employment injury was initially denied by the Office in a decision dated September 20, 2004 (xxxxxx781). Before filing the instant traumatic injury claim, she filed an August 13, 2004 notice of recurrence (Form CA-2a) under claim number xxxxxx781 for a July 2, 2004 recurrence of disability. The Office later advised appellant that because the February 12, 2004 initial injury claim was denied, she could not file for a recurrence of a denied claim.

[5] 5 U.S.C. § 8102(a) (2006).

[6] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 423-24 (2006).

[7] *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989). However, that same employee with fixed hours and a fixed workplace would generally not be covered when an injury occurs off the employing establishment premises while traveling to or form work. *Idalaine L. Hollins-Williamson*, 55 ECAB 655, 658 (2004).

[8] *Cemeish E. Williams*, 57 ECAB 509, 512-14 (2006).

establishment premises following a reasonable interval after working hours is not sufficient to bring the injury within the performance of duty.[9] The employee must also show that the injury resulted from some risk incidental to the employment and that the employing establishment received a substantial benefit from the activity.[10]

The employing establishment premises may include all the property owned by the employer.[11] But even though an employer does not have ownership and control of the place where an injury occurred, the locale may nevertheless be considered part of the premises.[12] For example, a parking lot used by employees may be considered a part of the employing establishment premises when the employer contracted for the exclusive use of the facility or where specific parking spaces were assigned by the employer.[13] Other factors to be considered include whether the employer monitored the parking facility to prevent unauthorized use, whether the employer provided parking at no cost to the employee, whether the general public had access to the parking facility and whether there was alternate parking available for the employee.[14] An employee's mere use of a parking lot is not sufficient, by itself, to demonstrate that the parking lot is part of the employer's premises.[15]

ANALYSIS

The record indicates that appellant was leaving work for the day when she allegedly injured her neck and back in the parking lot at 1210 Corbin St. Both the claims examiner and the hearing representative presumed that appellant was on the employing establishment's premises at the time of the alleged July 2, 2004 injury. However, the record does not clearly establish that the "parking lot" where appellant claimed to have injured her neck and lower back was part of the employing establishment's premises. At the November 20, 2008 hearing, appellant testified that her employer leased space in a corporate-owned building, which was shared by at least one other federal agency. The parking lot was reportedly located at the rear of the building, some 50 feet away. The hearing representative inquired whether appellant was "given a parking space" or if there was "free parking around the building...." Appellant generally replied: "Yeah. It was -- space for employees of the building."

The record does not include any additional information regarding the parking lot where appellant was allegedly injured on July 2, 2004. The limited information obtained at the November 20, 2008 hearing is insufficient to determine whether the parking lot at 1210 Corbin

[9] *Id.* What constitutes a "reasonable interval" before or after a work shift depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the activity. *Id.* at 514.

[10] *Id.*

[11] *Denise A. Curry*, *supra* note 7.

[12] *Id.*

[13] *Roma A. Mortenson-Kindschi*, *supra* note 6; *Diane Bensmiller*, 48 ECAB 675, 678 (1997).

[14] *Diane Bensmiller*, *supra* note 13.

[15] *Roma A. Mortenson-Kindschi*, *supra* note 6.

St. is part of the employing establishment's premises. Whether a 45-minute delay in appellant's departure constitutes a "reasonable interval" after her work shift or that the task may have been incidental to her work are of little or no consequence if appellant was not on the premises at the time of the alleged injury. Her activities at the time are largely inconsequential if appellant is ultimately determined to have been off the employing establishment premises when the alleged injury occurred. The Office's factual determinations thus far are dependent on the threshold issue of whether appellant was on the employing establishment's premises at the time of her alleged injury. The record in this regard is not fully developed. Accordingly, the Board finds that the case is not in posture for decision. On remand, the Office should obtain additional information from both appellant and the employing establishment regarding access, ownership and control of the parking lot where the July 2, 2004 injury allegedly occurred. After the Office has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: February 22, 2010
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