United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 17-0013**
	)	**Issued: June 6, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2016 appellant filed a timely appeal from a July 25, 2016 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 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 an injury in the performance of duty on July 6, 2015.

[1] Appellant timely requested oral argument before the Board. By order dated March 3, 2017, the Board exercised its discretion and denied the request, finding that the issue could be adequately adjudicated based on a review of the case record. *Order Denying Oral Argument*, Docket No. 17-0013 (issued March 3, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 9, 2015 appellant, then a 52-year-old retail window clerk, filed a traumatic injury claim (Form CA-1) alleging that at 7:15 p.m. on July 6, 2015 in the performance of duty she fell backwards and fractured her left wrist. She stopped work on July 6, 2015. The employing establishment indicated that appellant's duty shift was from 10:30 a.m. until 7:15 p.m.

In a July 6, 2015 statement, a supervisor, G.B., related that appellant informed her that she had "clocked off and walked out to the customer parking lot where she had moved her car from the employee parking garage during her break." She put her bags in the car and got out her shoes to change and fell backward on the pavement, fracturing her wrist. The supervisor questioned how appellant fell backwards without hitting the car. G.B. advised that appellant had clocked out, changed out of her work clothes, and walked into the customer parking area.

Appellant, in a July 8, 2015 statement, related that on July 6, 2015 she took out her shoes from the car, but lost her balance and fell. Two men helped her up and she called her cousin to take her to the emergency room.

In a July 9, 2015 e-mail, L.M., a physical security specialist with the employing establishment, related that video footage revealed that at 6:03 p.m. appellant moved her vehicle to the customer lot in front of the employing establishment and then returned to work. At 7:13 p.m. she walked out through the lobby in street clothes and put items in her vehicle. The remainder of the incident occurred outside the range of the camera.

The employing establishment controverted the claim. In a July 15, 2015 statement, it advised that appellant's work schedule was 10:50 a.m. to 7:15 p.m. The employing establishment indicated that she moved her vehicle to the customer parking lot at 6:02 p.m. from the employee parking lot without authorization. It asserted that appellant was not in the performance of duty at the time of her fall as her duty tour had ended for the day and her presence in the customer parking lot, while on the premises of the employing establishment, was not authorized or incidental to her work.

By letter dated July 20, 2015, OWCP requested additional factual and medical information from appellant, including a statement addressing the employing establishment's contention that her presence in the parking lot was not authorized.

In an August 10, 2015 response, appellant advised that on her last break of the day she usually got her bag from her vehicle so she could change her clothes prior to leaving work. She took a late break on July 6, 2015 because she was helping a new employee. Appellant related:

> "I took my break close to 6 p.m., so instead of carrying my bag back I drove my car to park it on the street so I could get some cool air because I had a bad headache all afternoon and didn't want to walk back to the garage. When I got around to the street I noticed the customer parking lot was empty so I parked there since it was so close to closing. We do not have a supervisor in the afternoon and did not know I needed authorization. I know I cannot park there all day and did not think it was a problem for that short amount of time."

Appellant indicated that she got her shoes from the car, dropped them onto the ground, and began to pick them up to put on. The next thing she remembered was that she was on the ground and her elbow hurt.

The employing establishment, on August 19, 2015, submitted a copy of an April 2, 2015 parking safety talk. It provided that an employee could not park without authorization, in reserved or unauthorized locations, or continually "in excess of 18 hours without permission or contrary to the direction of posted signs…." The employing establishment included a photograph of a sign in front of the customer lot indicating that it was "customer parking only" and that unauthorized vehicles would be impounded.

In an August 19, 2015 e-mail, C.G., with the employing establishment, related that the customer parking lot was an unauthorized location for employees to park and "completely separate from the employee lot which is specifically for employee use and requires an employee badge to enter into."

By decision dated August 21, 2015, OWCP denied appellant's traumatic injury claim. It found that she had not established that she was in the performance of duty at the time of the incident as she was in an unauthorized location and not performing duties incidental to her employment or from which her employing establishment derived a substantial benefit. OWCP further advised that the medical evidence was insufficient to show that appellant sustained a diagnosed condition as a result of the identified incident.

Appellant, on September 3, 2015, requested an oral hearing before an OWCP hearing representative. At the telephone hearing, held on May 12, 2016, she related that she moved her car on her last break, but got lightheaded due to the heat and lack of water so she drove around to the front of the building. When appellant left work after her tour ended she remembered hitting the ground after taking her shoes out of the car. She related that after the building closed at 6:00 p.m. numerous employees parked in the customer parking lot. Appellant further advised that even if she had left her car in the employee parking lot she would have walked past the place where she fell or fainted on her way to the employee parking lot. She noted that she was on the employing establishment's premises at the time of her injury.

In a decision dated July 25, 2016, OWCP's hearing representative affirmed the August 21, 2015 decision. He found that appellant had taken herself out of the performance of duty by moving her vehicle to an unauthorized parking location.

On appeal appellant questions why she was not covered when other employees parked in the customer parking lot. She notes that the area was under the control of the employing establishment and asserts that she was performing her work duties by going to her vehicle at the time of her injury. Appellant questions the accuracy of some statements submitted. She relates that she drove to the customer parking lot because she was dizzy due to the hot weather and lack of water at her workstation.

LEGAL PRECEDENT

FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The 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 employment.[4] In the course of employment relates to the elements of time, place, and work activity.[5] To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his or her master's business, at a place when she may reasonably be expected to be in connection with his or her employment and while she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.

As to the phrase in the course of employment, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to and from work, before or after work hours or at lunch time, are compensable.[6]

OWCP procedures provide, regarding prohibited activities:

> "*There may be no right to compensation* where the injury occurs while the employee is knowingly engaged in an act which has been prohibited by the [employing establishment]. The test in such a case is whether the injury was caused by the willful misconduct of the employee…. In these cases it is essential to determine whether the employee was fully aware of the prohibition, whether the prohibition was enforced, the extent to which the employee had diverted from assigned duties, and whether the particular act was within the general scope of assigned duties."[7]

OWCP procedures further provide that OWCP should obtain a statement from a supervisor that provides when the employees were informed of the prohibition and the manner of enforcement and a statement from coworkers or witnesses indicating whether they were aware of the prohibition and the manner in which they were informed.[8]

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[3] *Id.* at § 8102(a).

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

[5] *D.L.*, 58 ECAB 667 (2007).

[6] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

[7] Federal (FECA) Procedure Manual -- Part 2, Claims, *Performance of Duty*, Chapter 2.804.13 (March 1994).

[8] *Id*.

ANALYSIS

Appellant alleged that she fractured her left wrist when she fell in the parking lot of the employing establishment after she left work around 7:15 p.m. at the conclusion of her work shift. The parking lot was on the premises of the employing establishment and the incident occurred within a reasonable interval after official working hours while she was engaged in preparatory or incidental acts associated with leaving work.[9] The issue, consequently, is whether appellant removed herself from employment by engaging in a prohibited act.[10]

In a July 15, 2015 e-mail, the employing establishment contended that appellant was not in the performance of duty at the time of the July 6, 2015 incident as she had moved her vehicle to the customer parking lot at 6:02 p.m. without authorization. It provided a copy of an April 2, 2015 parking safety talk which indicated that employees could not park without authorization or contrary to the instructions on posted signs. The employing establishment further submitted a photograph of a sign designating customer parking and indicating that unauthorized vehicles would be impounded. In an August 19, 2015 e-mail, C.G. related that it was not authorized for employees to park in the customer parking lot.

Appellant, in a statement dated August 10, 2015, related that she was not aware that she needed authorization to move her car, noting that her location did not have an afternoon supervisor. She advised that she knew that she could not park in the lot all day, but thought that it was appropriate for a short time. Appellant moved her car to the customer parking lot around 6:00 p.m. She asserted that the building closed at 6:00 p.m. at which time other employees parked in the customer parking lot. Appellant also noted that she would have passed the location where she fell had she left her car in the employee parking lot.

The Board finds that the case is not in posture for decision. OWCP procedures provide that if the employee knowingly engages in an act prohibited by her employing establishment, there may be no right to compensation if the injury is the result of willful misconduct.[11] The procedures further provide that OWCP should ascertain whether the employee was aware of the prohibition and whether and how the prohibition was enforced. It should also obtain statements from coworkers or witnesses advising whether they were aware of the prohibition and how the prohibition was communicated.[12]

The record does not contain evidence addressing whether all employees, including appellant, were present at the parking safety talk, whether employees were informed of the prohibition other than through the safety talk, and whether the prohibition was enforced for other employees, especially after the building closed to the public at 6:00 p.m. On remand, OWCP

[9] *See A.B.*, Docket No. 15-0288 (issued May 21, 2015) (finding that a claimant had established that the incident occurred a reasonable interval after clocking out of work when he was assaulted a few minutes after clocking out at 4:50 p.m.).

[10] *See generally Karen Cepec*, 52 ECAB 156 (2000).

[11] *See supra* note 7.

[12] *Id.*

should, in keeping with its established procedures, obtain supplemental statements from the employing establishment advising how the prohibition was communicated and whether and how it was enforced, and statements from coworkers indicating whether they were aware of the prohibition and the manner of enforcement in accordance with its procedures. After such further development as deemed necessary, OWCP will issue an appropriate *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 6, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board