



ESTHER ALSTON,	:	
	:	
Claimant	:	
	:	
v.	:	Dir. Dkt. No. 91-64
	:	H&AS No. 91-93
WASHINGTON HOSPITAL CENTER,	:	OWC No. Unknown
	:	
Self-Insured Employer	:	

Appeal from the Compensation Order of Malcolm J.L. Harper, Hearing Examiner

Howard Ackerman, Esquire
for the Claimant

John Duncan, Esquire
for the Employer/Insurer

DECISION OF THE DIRECTOR

I. Preliminary Statement

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Code, §36-301 et seq. (1981 Edition, as amended) (hereinafter, the "Act"). A full evidentiary hearing was held on February 13, 1991 before Hearing Examiner Malcolm J. L. Harper.

Employer/Carrier's (hereinafter "employer") Application for Review and adjoining Memorandum of Points and Authorities were timely filed and the claimant's response to the same was likewise timely filed and taken into consideration on appeal.

II. Background

The claimant was employed as a nurse by the employer. On or about October 9, 1990 while walking on a driveway leading to the building where she is employed, the claimant fell and ruptured a tendon in her knee.



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The issues presented at the hearing were the nature and extent of the claimant's disability, if any, and; whether the alleged disability arose out of and in the course of the claimant's employment. The claimant sought an award under the Act for temporary total disability benefits from October 9, 1990 through December 24, 1990, the payment of all causally related medical expenses, interest on accrued benefits, and penalties.

The Hearing Examiner found the following:

1. The claimant was employed by the employer as a medical surgical "floater" nurse on the 11:00 p.m. to 7:30 a.m. shift;
2. As a perquisite of her employment on the late shift, the employer provided free parking for the claimant in a normally pay-to-park garage in an area adjacent to employer's building;
3. On October 9, 1990 at approximately 10:55 p.m., the claimant, while walking from said garage to the hospital entrance, encountered a depression in the driveway and fell, rupturing a tendon in her left knee; and,
4. The claimant received immediate medical attention and was released by her treating physician to return to her usual employment on or about December 24, 1990.

Upon the review of the arguments of counsel, the Hearing Examiner concluded that:

in order for the claimant's injury to be compensable under the Act, a claimant's injury must "arise out of" and occur "in the course" of employment with the employer. D.C. Code Section 36-301(12). Thus, the claimant must be performing an obligation or condition of employment which exposed her to the danger causing the injury and the injury must occur within the time and space limits of the employment. Grayson v. Washington Metropolitan Area Transit Authority, H&AS No. 83-260, OWC No. 0013869 (May 23, 1985), aff'd sub nom. Grayson v. D.O.E.S., 516 A.2d 909 (1986).

The Hearing Examiner also concluded that, " in this instance the crucial question becomes whether the driveway is in fact a part of the employer's premises for compensation purposes." Esther Alston v. Washington Hospital Center, (HA&S) April 24, 1991, P. 3.

The Hearing Examiner found that the claimant suffered an accidental injury on or about October 9, 1990 which arose out of and in the course of her employment.

The employer argues that:

1. The Hearing Examiner erred in finding that a fall on a public roadway while walking from a parking lot to the employer's building occurred during the course of employment; and,
2. The Hearing Examiner erred in finding that an unexplained fall on a public drive while walking from a parking lot to the work place before the claimant began her work duties arose out of claimant's employment. [Emphasis added].

In support of these contentions, the employer states that, "the fall did not occur on the employer's premises and did not occur during the course of the claimant's employment . . .", although, "the employer provided free parking for the claimant since there was no particular requirement that she park in that parking lot, use an automobile, as transportation to work, or use her car in connection with her work". Employer's Application for Review, P. 8. The employer also argues that the Hearing Examiner is in error since the parking lot in question is not owned by the employer and is closer to a competing medical facility.

The claimant responds that she was performing an obligation or condition of employment which exposed her to the danger causing the injury and that her injury is therefore compensable pursuant to §36-301(12) and Grayson v. WMATA, H&AS No. 83-260, (May 23, 1985), aff'd sub nom, Grayson v. Department of Employment Services, 516 A.2d 909 (1986).

III. Discussion

A. Standard of Review

The Director of the Department of Employment Services (hereinafter, "Director") must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. See D.C. Code §36-301; 7 D.C.M.R. Employment Benefits §230. Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. George Hyman

Construction Co. v. Department of Employment Services, 498 A.2d 563, 566 (D.C. 1985) Upon review of the record, the Director agrees that all of the Hearing Examiner's findings of fact are supported by substantial evidence.

The Director is not convinced by the employer's argument that it has no proprietary interest in the parking lot on which the claimant parked and agrees with the Hearing Examiner that an apparent easement of passage or ingress and egress pertaining to the parking lot is sufficient evidence to include the parking lot as part of the employer's premises for the purpose of compensation. See Eugenia Epshteyn v. Washington Hospital Center, (HA&S 89-57) April 18, 1989, P. 3.

Due to the fact that:

1. It was a common practice for nurses and other staff similarly employed to park in the parking lot without charge; and,
2. The parking lot is owned by the parent company of the employer

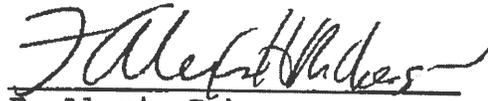
there is a substantial evidentiary nexus strong enough to infer that the employer approved of the claimant's and other employee's use the parking lot which exposed her to injury while in route to her post. Hence, there is sufficient evidence to conclude that the parking lot is part of the employer's premises for the purposes of compensation where the record demonstrates that the employer had an easement of passage or ingress and egress. Accordingly, there is sufficient evidence to conclude that an injury suffered thereon is in the course of the claimant's employment. The Director holds that this exposure in route to her post is substantially related in time, proximity, and work related purpose to the claimant's work related duties. See Larry Carey v. Safeway Stores, Inc., (Dir. Dkt. No. 96-88) January 22, 1997, P. 2.

In sum, the Director agrees that the exception to the coming and going rule identified by Professor Larson is analogous to the instant case where the employee is injured during a walk from a work related parking lot to the employer's building where the employer is aware that employees use the lot for transportation and other commuting conveniences, and the injury occurs within the time boundaries of employment immediately prior to or immediately after the tour of duty with the employer. See 1A Larson, The Law of Workmen's Compensation, §15.40 (1987).

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IV. Disposition

Accordingly, for the reasons more fully set forth above, the Compensation Order of April 24, 1991 is hereby affirmed, adopted, and incorporated by reference herein.



F. Alexis Roberson
Director

Date MAY 9 - 1997