BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

TRACY A. DIETEL,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1362880
	)	
CHARTWELL LAW OFFICES,	)	
	)	
Employer.	)	

DECISION ON CLAIMANT'S PETITION TO DETERMINE COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on June 2, 2011, in the Hearing Room of the Board, New Castle County, Delaware.

PRESENT:

JOHN D. DANIELLO

TERRENCE M. SHANNON

Deborah J. Massaro, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Matthew R. Fogg, Attorney for the Employee

Christopher T. Logullo, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On January 20, 2011, Tracy A. Dietel ("Claimant") filed a Petition to Determine Compensation Due against Chartwell Law Offices ("Employer") alleging that she was injured in a compensable work accident on January 7, 2011. Employer disputes that the injury arose out of the course and scope of Claimant's employment. A hearing was held on Claimant's petition on June 2, 2011. This is the Board's decision on the merits.

SUMMARY OF THE EVIDENCE

Michelle Siaris, Office Manager for Employer, testified at the hearing as a fact witness. She has worked for Employer since January of 2009. In her role as the Office Manager she interviews applicants and handles human resources issues.

Claimant was hired as a paralegal in January of 2011. She was paid on an hourly basis. Employees work an eight hour day with a one hour, mandatory, unpaid lunch break. Overtime is paid for working through lunch, but it must be pre-approved. Employees do not receive any other breaks. Claimant often worked through her lunch break. Employees are not permitted to smoke in the office, but sometimes take smoke breaks.

When Claimant was hired Ms. Siaris informed her about a parking lot in the city of Wilmington, at Ninth and West Streets, which members of the firm use because it is one of the least expensive lots. All employees, with one exception,[1] park in the lot. Ms. Siaris did not instruct or encourage Claimant to park in any specific lot. She gave Claimant the information and Claimant was free to park anywhere she wanted. Employer does not pay for parking.

The lot is operated by Delaware Offices and is one block away from the Chartwell Law Office. Ms. Siaris did not negotiate parking lot fees for employees. There is no business agreement or contract with the parking lot. Employer has no control over the parking lot.

[1] Ms. Siaris testified that she does not know why one part-time attorney does not park in this lot.

Claimant's duties were fixed at the law office located at 300 Delaware Avenue on the eighth floor. Claimant did not travel as part of her job duties as a paralegal.

On January 7, 2011 Claimant alleges that an incident occurred around the lunch hour when she was returning to the office from meeting a windshield repairman in the parking lot. Previous to the incident Ms. Siaris gave Claimant permission to conduct the errand, expecting that Claimant would return to the office that day. The meeting with the windshield repairman was unrelated to Claimant's work as a paralegal for Employer.

Claimant was away from the office for approximately thirty to forty-five minutes from the time that she asked for permission to leave, around noon, until the time that she returned. After meeting with the car windshield repairman Claimant reported to Ms. Siaris that she had slipped and fallen. Her pant leg was torn and her knee was scraped and bleeding. Ms. Siaris directed Claimant to a medicine kit. Claimant did not inform Ms. Siaris where or when she slipped and fell. Ms. Siaris does not believe that the Managing Partner, Mr. Seth J. Reidenberg, was in the office when Claimant returned.

Seth J. Reidenberg, Managing Partner of the Chartwell Law Office in Delaware, testified at the hearing as a fact witness. Claimant worked directly for him, and her paralegal work entailed calendaring, answering phones, sending letters, filing documents electronically, requesting medical records, and preparing exhibits for hearings. Her work did not necessitate that she leave the office. He confirmed that Claimant was paid on an hourly basis. Employees are paid for a thirty-five hour work week and any work over forty hours a week is considered overtime, which must be pre-approved.

Employees are to take a one hour lunch break unless the overtime is pre-approved. Claimant usually ate lunch in her office. Mr. Reidenberg does not know what time Claimant

would take her lunch breaks because he was not always in the office and her door was closed when she did so. Claimant would frequently work overtime without approval and there had been discussions with her about the need to obtain approval before working overtime. There was a high volume of work, but Mr. Reidenberg is not sure if it was the volume of the work, or Claimant's work habits, which necessitated the overtime.

The firm leases the office space located at 300 Delaware Avenue, Suite 800A. There are two entrances, one side entrance which requires key card access and the main lobby entrance. Mr. Reidenberg drew a diagram of the area from the parking lot to the office, (Employer's Exhibit No. 1). He also included the location of the grates on the map, which begin and end along the Verizon building. To get to the firm from the parking lot one must cross the street and walk a block along the Verizon building.

The law firm does not exercise any control over the public parking lot or public sidewalks. The firm does not direct employees to park in any specific lot, nor does it pay for parking. Employees are free to park wherever they like. The firm has no contract with parking lot management, nor do its employees receive any discount. Mr. Reidenberg notes that there is another parking lot directly across the street, and a covered lot at 222 Delaware Avenue. Mr. Reidenberg parks at the parking lot on Ninth and West Streets because it is the least expensive lot that is closest to building.

Mr. Reidenberg does not remember if he was in the office on January 7, 2011 when Claimant left for her errand. He did have a discussion with Claimant after she returned and she explained that she fell on a grate on the sidewalk and showed him her ripped pant leg and scraped knee. He does not know if Claimant alleges that she fell because of the grate, but he knows that she said that she fell on the grate. He did not discuss what time it occurred or what

she was doing when it occurred. Claimant meeting with the repairman to pay for her windshield repair is unrelated to her work duties.

Mr. Reidenberg prepared an Injured Employee's Job Analysis form, (Claimant's Exhibit No. 1). However, he did not complete the section referencing Claimant's shift hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and that she was entitled to a one hour lunch, but rarely took it.

Claimant testified at the hearing on her own behalf. She is thirty-eight years old, and began working as a paralegal for Rahaim & Saints in February of 2011.

While working for Employer she arrived at the office around 8:00 a.m. and often stayed after 5:00 p.m. Claimant was paid overtime for hours that she worked over a forty hour week. She often worked through her lunch break, eating in her office. She also took an hour lunch break at times, which she would mark on her timesheet. She could take her lunch break at any time during the day.

When Claimant was hired she was told that Employer recommends the parking lot at the corner of Ninth and West Streets because it is the least expensive lot and everyone parks there. Employer highly recommended it, but Claimant was not required to park there. The lot is a block away from the building, or an approximate three minute walk.

On January 7, 2011 Claimant drove to the parking lot and walked to work. After she started working she returned to the lot because she had to pay a windshield repairman to repair a small crack in her windshield. She did not want to leave the office because she had so much work to do. A Union Auto Body repairman repaired the windshield in the parking lot and Claimant walked to the lot in order to make the payment. A receipt timed at 12:35 p.m. was provided, (Claimant's Exhibit No.2), and Claimant then returned to work.

Prior to leaving for the parking lot Claimant spoke with Ms. Siaris and asked permission to leave the office. Claimant indicated that she would be gone for fifteen minutes and Ms. Siaris gave permission. She informed Ms. Siaris around mid-morning, and left the office at approximately 12:30 p.m. returning around 12:40 p.m. or 12:45 p.m. Claimant typed her time on her timesheet and clocked out. She walked to the lot, paid the repairman and as she was walking back toward the office she slipped and fell on the grate. It was icy outside and when she reached the grate she fell on her knee which started bleeding. She reported the fall to the Brandywine Realty Company. When she returned to the office she continued summarizing medical records which had to be completed that day.

Claimant agrees that the diagram drawn by Mr. Reidenberg is correct, except that she only remembers one grate on the sidewalk and that was about five to ten steps from the entrance of the building that requires key card access. The grate is at the corner of the Verizon building and Claimant circled the grate on the diagram (See Employer's Exhibit No. 1).

Claimant is a smoker and smoked occasionally while at the firm. She thinks there was an ashtray near the entrance that required a key card.

On cross-examination Claimant agrees that she worked in a fixed place from 8:00 a.m. to 5:00 p.m. and was provided with a one hour lunch break. She was told that she had to take one hour for lunch because she was working too much overtime. She agrees that she was paid on an hourly basis, and not for her lunch hour. She agrees that her windshield repair was not related to work. She is not sure if Union Auto Body could have performed the work in the evenings.

She was paid for her lunch break on many occasions due to overtime, but on the day of this incident she does not believe that she was paid. She is not certain.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Course and Scope

The Delaware Workers' Compensation Act provides that employees are entitled to compensation "for personal injury or death by accident arising out of and in the course of employment."[2] Because Claimant filed the current Petition, she has the burden of proof.[3] The Board may grant Claimant's Petition to Determine Compensation Due, only if Claimant meets her burden of establishing that the January 7, 2011 slip and fall incident arose out of and occurred within the course and scope of her employment with Chartwell Law Office.

The Workers' Compensation Act ("Act") states that an employee will be compensated "for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence."[4] The terms "arising out of" and "in the course of" employment are not synonymous, but distinct, and both must be shown to exist in a given case.[5] "In the course of employment" relates to the time, place and circumstances of the injury.[6] It covers things that an employee may reasonably do or be expected to do within a time during which he is employed and a place where he may reasonably be during that time.[7] "Arising out of

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[2] DEL. CODE ANN. tit. 19, § 2304.

[3] DEL. CODE ANN. tit. 29, § 10125(c).

[4] DEL. CODE ANN. tit. 19, § 2304.

[5] *See Histed v. E.I. DuPont de Nemours & Co*, 621 A.2d 340, 343 (Del. 1993); *Storm v. Karl-Mil, Inc. by the Home Ins. Co.*, 460 A.2d 519 (Del. 1983); *Stevens v. State*, 802 A.2d 939, 945 (Del. Super. Ct. 2002); *Taylor v. American Stores Co.*, 1994 WL 465542 at *2 (Del. Super. Ct.); *Children's Bureau v. Nissen*, 29 A.2d 603 (Del. Super. Ct. 1942).

[6] *Tickles v. PNC Bank*, 703 A.2d 633 (Del. 1997); *Storm*, 460 A.2d at 521.

[7] *Dravo Corp. v. Strosnider*, 45 A.2d 542, 543-44 (Del. Super. Ct. 1945). *In Johnson v. E.I. DuPont de Nemours & Co.*, 182, a.2d 904, 906 (Del. Super. Ct. 1962) the Court set forth the following agency law test for determination of scope of employment:

(1) Conduct of a servant is within the scope of employment if, but only if:
  (a) it is of a kind he is employed to perform;
  (b) it occurs substantially within the authorized time and space limits;

the employment" refers to the origin and cause of the injury.[8] "It is sufficient if the injury arises from a situation which is incident or has a reasonable relation to the employment."[9]

Course of employment is not defined by statute, rather, the determination of whether Claimant's accident occurred within the course of his employment is a legal conclusion determined by the facts.[10] Questions relating to the course and scope of employment are highly factual, therefore, they must be resolved under a totality of the circumstances test.[11]

However, the Act further provides that it:

> [s]hall not cover an employee except while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as part of such service at the time of the injury....[12]

This section has been interpreted to create the so-called "going and coming" rule of employer non-liability, which denies compensation for injuries sustained during an employee's regular travel to and from work based on the rationale that employees face the same hazards

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(c) it is actuated, at least in part, by a purpose to serve the master, and
(d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master.

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

[8] *Tickles*, 703 A.2d at 637; *Storm*, 460 A.2d at 521.

[9] *Stevens*, 802 A.2d at 945.

[10] *Collier v. State*, Del. Super. Ct., C.A. No. 93A-06-022, Del. Pesco, J., 1994 WL 38100 (July 11, 1994) (Order) (citing *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340 (Del. 1993)).

[11] *Histed*, 621 A.2d at 345.

[12] 19 *Del. C.* § 2301(18)(a).

during daily commuting trips as the general public.[13] Because the Worker's Compensation Act is to be liberally interpreted, the "going and coming" rule should be narrowly interpreted and exceptions to this rule should be broadly construed "so that coverage is not denied whenever the injuries can be fairly characterized as arising out of the employment

Under the facts of the current case, it is clear that the "going and coming" rule is inapplicable because at the time of her injury, Claimant was not engaged in her daily commute. The evidence is undisputed that Claimant had already arrived at work, started working and then left to pay the windshield repairman. Considering that the "going and coming" rule is to be interpreted narrowly, the Board declines to apply it to a situation arising after an employee has already arrived at work.

Based on the totality of the evidence presented to the Board in this case, the Board finds that Claimant's January 20, 2011 slip and fall did not occur in the course and scope of her employment as a paralegal for Chartwell Law Offices for the reasons set forth below.

The facts are undisputed that the incident occurred when Claimant slipped and fell on a public sidewalk as she was returning to work from a parking lot on the corner of Ninth and West Streets after paying a windshield repairman for repair of her personal vehicle. Paying the repairman in no way furthered the employer's business. It was a personal errand. Claimant argues that paying the repairman constitutes an act of personal comfort that falls within the general scope of employment.

There is no requirement that there be an essential, direct causal relationship between the employment activities and the injury. An injury that arises while an employee is engaged in conduct that is incident to employment is sufficient to be within the scope of employment.

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[13] *Histed,* 621 A.2d at 343; *Collier v. State of Delaware*, Del. Super. Ct., C.A. No. 93A-06-022, 1994 WL 381000, Del. Pesco, J. (July 11, 1994) (Order).

"[R]easonably necessary acts of personal convenience or comfort that take place on the employer's premises, in preparation or anticipation of the workday, are incident to employment."[14] These activities can include such things as eating, drinking, smoking, using toilet facilities or just seeking fresh air.[15] If an employee is injured while engaged in such an act of personal convenience, the injury is still compensable under the Act.

To be compensable, an employee's injury must still be reasonably related or incidental to the employer's business. A personal deviation from work duties may be so great that an intent to abandon the job temporarily may be inferred so that the conduct cannot be considered an incident of the employment. Such deviations from the employer's business can break the causal connection so that the injury cannot be said to have arisen out of the course and scope of employment.[16]

Therefore, when an employee is injured while doing non-work tasks on the employer's premises, compensability may depend upon a distinction between minor incidents of the employee attending to reasonable matters of personal convenience or comfort, which would still be considered to be within the course and scope of employment and conduct of an employee that constitutes a personal deviation from employment so great that it can fairly be classified as reflecting an intent to temporarily abandon the job and no longer be within the course and scope of employment. Multiple factors should be weighed. For example, a violation of an employer's workplace rule "may have definite relation to the question of whether an accident arises out of

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[14] *Tickles*, 703 A.2d at 637.

[15] *Id.*

[16] *See Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 305-06 (Del. Super. 1996)(citing *Ford v. Bi-State Development Agency*, 677 S.W.2d 899, 902 (Mo. Ct. App. 1984)).

employment."[17] However, by the same token, a minor violation will not necessarily remove an employee from the sphere of employment.[18]

Claimant was an hourly employee and she testified that she typed her time on her timesheet and "clocked out" when she left for the windshield repair. She does not think that this was a paid break. Claimant maintains though that this break is comparable to a cigarette break and, thus, her act was one of personal comfort that falls within the scope of her employment. However, Claimant was not on a cigarette break, but rather an errand to pay for the repair of her personal vehicle. The Board does not necessarily agree that Claimant's return walk from the parking lot after doing so is a reasonably necessary act of personal convenience. It may very well have been such a personal deviation from her work duties that it caused a break in the causal connection, as Employer argues. However, the Board need not make a determination on the issue because, importantly, this "personal comfort" doctrine normally applies only when the employee is on the employer's premises at the time of the injury. [19] If the employee is off the premises, then the employment connection may be considered broken.

For example, in *Bullock v. ACW Corporation* compensation was denied when the employee was injured while crossing a public road (Concord Pike) coming back from doing a personal errand during an unpaid break.[20] In *O'Grady v. Comp USA* compensation was denied when the employee was injured off the employer's premises while eating lunch on an unpaid

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[17] *Dravo*, 45 A.2d at 544.

[18] *Id.* at 546.

[19] *Stevens v. State*, 802 A.2d 939, 949 (Del. Super. 2002).This is only true if the employee has a "fixed" place of employment. A different (albeit related) set of rules has developed for an employee who has a "semi-fixed" place of employment and who can be characterized as a "traveling employee." *See Devine*, 663 A.2d at 1212.

[20] Del. IAB, Hearing No. 1143670 (August 30, 2001).

lunch break.[21] In *Akers v. State of Delaware* compensation was denied when the employee was injured while engaged on a personal errand off of the employer's premises.[22]

This raises the key issue in this case: was Claimant on the employer's "premises" at the time of the slip and fall incident? Employer argues that the incident on a public sidewalk returning from a personal errand in a public parking lot does not qualify as occurring on Employer's "premises." Claimant, on the other hand, contends that she was on the "premises," given the close proximity of her fall to the building and that the parking lot, although not contiguous, was part of Employer's premises based upon a control by use theory.

For purposes of workers' compensation law, the term "premises" has not been clearly defined by statute or case law. In large part, this reflects the need for flexibility in such terms to cope with the wide variety of possible work situations that an employee may be in.

It is clear that, for workers' compensation purposes, the term "premises" extends beyond the strict confines of where Claimant's assigned work place may be. In *Tickles*, the employee worked for PNC Bank and, at the time of her work accident, she was assigned to work in Building 400 of PNC's Bellevue Complex. On the date of injury, she stopped off at Building 103 at the Complex to use an automated teller machine, and then slipped and fell in the parking lot of Building 103. Although the employee was not on the specific site of her job duties (Building 400), the Supreme Court considered the accident to have happened on the employer's "premises," noting that there was a business relationship between PNC's operations in Building 103 and Building 400.[23]

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[21] Del. IAB, Hearing No. 1188154 (September 12, 2001).

[22] Del. IAB, Hearing No. 1192131 (September 11, 2002).

[23] *Tickles*, 703 A.2d at 636.

Claimant maintains that the instant case is comparable to *Rose v. Cadillac Fairview Shopping Center Properties, Inc.* which involved a remote area of a mall parking lot. Claimant finds a likeness because in *Rose*, as in this case, the parking lot was not contiguous to the work area. In *Rose* the court reasoned that employer exhibited control of the parking lot through directing its employees to park in a certain area of the mall parking lot; condoning the use of that area by employees; using security cameras to monitor the lot; and security officers were available to escort employees to and from that area.[24] However, the Board finds that the *Rose* case is dissimilar to the instant case because here the witnesses all agree that employees are free to park wherever they choose. Claimant concedes that although she was told about the parking lot initially, she was not required to park there. Indeed all witnesses agree that there are other parking lots nearby. Moreover, Employer does not demonstrate the kind of control of the parking lot which would bring it within the ambit of its premises. For example, Employer does not monitor the lot or provide security officers to escort employees to the lot such as in the *Rose* case.

There is no evidence to suggest that Employer exercises any indicia of control over the public parking lot or sidewalk in any fashion. There is no business relationship between Employer and the owner of the parking lot. Employer has no contract with the owners and did not negotiate any fees or discounts with the owners of the lot. Employer does not pay for employees to park in the lot. Employer also has no control over the public sidewalk. There is no evidence that Employer maintained these areas or had a duty or a practice of clearing the lot or sidewalk of ice, that it actually used the areas for its business, or that it installed or maintained the areas. These are such acts as would bring these areas within the concept of the employer's

[24] 668 A.2d 782 (Del. Super. Ct. 1995).

premises.[25] The sidewalk was closest to a side entrance, not the main entrance of the facility. There was no evidence presented that this side entrance was essential to Employer's business.[26] Absent such factors, mere proximity to the place of employment is insufficient to render an injury taking place on a sidewalk or street as being within the employer's "premises."[27]

In a somewhat analogous case in relationship to the premises issue, the claimant in *Petteway* sustained a slip and fall on a public sidewalk which was immediately adjacent to the employer's premises while she was attempting to reach her vehicle parked on a public street.[28] The Board found that the "premises rule" applied and workers' compensation benefits were denied.[29] In *Petteway* the employer was aware that employees parked on the public street and that they came into the workplace by a side entrance. There was, however, no evidence that the employer exercised any indicia of control over the areas of the street or sidewalk.[30] Similarly, in the instant case Claimant fell on a public sidewalk upon her return from a public parking lot. While she may have been in close proximity to a side entrance of the workplace, Employer exercises no "control" over the public lot or sidewalk, and thus, Claimant was not on Employer's premises when the incident occurred.

Claimant also relies on *Mary Braddy v. State of Delaware (University of Delaware)*, where similarly the "going and coming" rule was not applicable because claimant's injury did

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[25] *See* Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, § 13.02[2][b], [c], & [d].

[26] *See* Larson, at § 13.02[2][a].

[27] Larson, at § 13.02[2][e].

[28] *Cheryl A. Petteway v. Davita, Inc.*, Del. IAB, Hearing No. 1227030 (March 25, 2004).

[29] *Id.* at 11.

[30] *Id.*

not occur during her daily commute.[31] Claimant was deemed to be on the premises when she was en route from a newspaper box to a building where she performed her custodial service tasks. Importantly though, the site of the accident was on property owned by employer and under its control. The incident occurred in close proximity to claimant's assigned work station. The Board found that "this common ownership and control of the property, combined with the close geographical proximity of the accident site and Claimant's assigned work area," were sufficient enough to determine these were "premises" for purposes of the case.[32] Critically, in the instant case, despite close proximity, Employer does not own or "control" the sidewalk on which Claimant fell, or the parking lot to which she journeyed for this errand.

Claimant further relies on *Cox v. Quality Car Wash* where the Court found that a shopping center parking lot across a public road from employer's car was part of employer's premises under the "control by use" theory.[33] The employer used the lot to store an overflow of cars waiting for services; company policy allowed parking on the lot; it was on appropriated state land; and was reasonable for employees to use the lot for parking. Thus, employer had established the parking lot, which was not contiguous to the work area. Again, the instant case is distinguishable in that there is no evidence to show that Employer has any indicia of control of the public parking lot at Ninth and West Streets. Employer has no policy regarding the parking lot, nor does Employer have any business relationship with the parking lot owners.

Employer points to the *Stevens* case, wherein claimant was injured at a convenience store parking lot on her way to work which was ultimately not considered by the court as employer's

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[31] Del. IAB, Hearing No. 1272981 (April 10, 2006).

[32] *Id.* at 12.

[33] 449 A.2d 231 (Del. 1982).

premises.[34] The *Stevens* court properly distinguishes the *Cox*, *Rose* and *Tickles* cases based on issues of control.[35] The court notes that in all three of these cases evidence of control of the parking lots by the employers had been identified.[36] Then the court found that the "close connection between employers and 'premises' in the Delaware cases discussed above are absent here."[37] In the same way, these elements are lacking in the instant case.

Lastly, Claimant maintains that absolute control of the premises is not required to show the area is considered "premises" of employer. While this is true, ultimately, in the instant case the evidence reveals that there is no indication of control by Employer of either the parking lot where Claimant parked her personal vehicle, or the public sidewalk where Claimant fell. It is undisputed that Employer was aware that employees parked in the lot at the corner of Ninth and West Streets and of necessity had to walk along this public sidewalk to enter the building. Simply because Employer knows that employees park in the parking lot does not mean that the lot becomes Employer's premises. Knowing that employees arrive by bus would not, in itself, make the nearest bus stop part of the premises. Similarly, knowing that employees park in a public parking lot does not, in itself, make the lot, or public sidewalk, part of the employer's premises.

In consideration of all the evidence presented, the Board finds that Claimant was not on Employer's premises at the time of the incident and thus her injury is not compensable.

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[34] 802 A.2d 939, 947 (Del Super. Ct. 2002).

[35] *Id.*

[36] *Id.*

[37] *Id.*

STATEMENT OF THE DETERMINATION

For the reasons set forth above, Claimant's petition is **DENIED**.

IT IS SO ORDERED THIS 27th DAY OF JUNE, 2011.

INDUSTRIAL ACCIDENT BOARD

JOHN D. DANIELLO

TERRENCE M. SHANNON

I, Deborah J. Massaro, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

Mailed Date: 6-28-11

OWC Staff