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SUMMARY OF ANOTHER SUCCESS AS YOUR UNION STRIVES TO IMPROVE YOUR WORKING CONDITIONS

Worker in course of employment when tripping, Appeals Resolution Officer rules

CCAC

(September 6, 2016)

A full-time nurse, 19 weeks pregnant at the time, injured herself when she was dropped off for work in the fire lane at the renal entrance of the hospital a few minutes before the beginning of her shift on July 3, 2014.

Her community care access centre employer leased an office on the main floor of the hospital, and the closest entrance was the renal entrance. There were no spots available to pull over along the fire lane beside the entrance, so the worker's boyfriend stopped the car in the fire lane on the exterior side of an island/median with a concrete wall that supported a canopy over the renal entrance. The island had a narrow sidewalk around it with yellow-painted caution curbing nine inches in height, compared to the normal 5.5 inches.

The worker was attempting to step onto the narrow sidewalk and walk around the island to the renal entrance, which she had done in the past without incident. This time, she misjudged the height of the curb and fell forward onto the concrete wall, fracturing her right arm.

The WSIB denied her claim, finding that although she was using an accepted entrance, she removed herself from being in the course of employment when she used a non-designated drop-off point with higher than usual curbing. The WSIB upheld the decision on reconsideration, finding that the necessary criteria of "place" was not satisfied when the worker chose to get out of her vehicle in an area not designated for doing so.

An appeal hearing in writing was conducted. ONA submitted photographs showing the typical vehicle congestion at the renal entrance and individuals standing on the island/median; a witness statement from a coworker confirming the congestion and drop-off practices; and a news article on new regulations for parking/drop-off at this entrance instituted by the hospital a few weeks after the worker's accident.

The relevant WSIB Operational Policy (15-03-04), which addresses "boundaries in multi-storey buildings," provides that the employer's premises are "all common areas for entering or exiting the building at street level, including outside stairs to public property." Our evidence demonstrated that the area where the injury occurred was commonly used as a drop-off area and there was no signage prohibiting this practice. We also submitted the entire area around the renal entrance should be considered a common area for entering and exiting the building within the meaning of WSIB policy.

The employer argued that the location of the injury was not a common area for entering or exiting the building within the meaning of the WSIB policy and she was therefore not in the course of her employment, submitting photographs showing nearby pedestrian crosswalks that lead to the renal entrance. It argued the worker put herself in an unsafe situation by choosing to walk in an area where foot traffic was not encouraged.

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Initial entitlement was granted for a right distal humeral shaft fracture; the extent and duration of benefits flowing from this decision will be determined by WSIB Operations. The Appeals Resolution Officer (ARO) found that while the exterior median was not necessarily a designated drop-off location, it was a “common area” where employees and visitors routinely were dropped off and picked up. She accepted the worker was in the course of her employment when she tripped and fell just prior to the start of her shift. Furthermore, she accepted that proof of accident had been established in this case.

Importance to ONA: This is an example of an ARO interpreting and applying WSIB Operational Policy broadly to grant initial entitlement. It is encouraging, and reason to keep making arguments that push the boundaries of what constitutes “employer premises” and “in the course of employment.”

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