IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Highmark Incorporated, Petitioner	:	
v.	:	No. 1095 C.D. 2009
	:	Submitted: October 30, 2009
Workers' Compensation Appeal Board (Belt), Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE QUIGLEY FILED: January 20, 2010

Highmark Incorporated (Employer) petitions for review of the May 5, 2009 order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of the workers' compensation judge (WCJ) to grant the claim petition filed by Julie Belt (Claimant). We affirm.

Claimant suffered a displaced tibial fracture and a dislocation of her right ankle on February 24, 2003, when she slipped on ice and fell on the parking lot used by Employer's employees as she was walking to Employer's building to commence her workday. Claimant filed a claim petition in April 2003, and a WCJ

granted the petition, concluding that Claimant was injured in the course and scope of her employment and that Employer's contest was not reasonable.

Employer appealed to the WCAB, which vacated and remanded for findings of fact necessary to determine whether the parking lot was part of Employer's "premises" under *Ortt v. Workers' Compensation Appeal Board (PPL Services Corporation)*, 874 A.2d 1264 (Pa. Cmwlth. 2005). On remand, the WCJ found that: (1) the parking lot was used by employees, and not by members of the public, as in *Ortt*; (2) Employer did not lease a specific number of spaces from a third party, as in *Ortt*; (3) Claimant did not have an option to rent the space she used every day, as in *Ortt*; (4) Claimant was arriving to start her work day, not leaving to go home, as in *Ortt*; and (5) the parking lot was in close proximity to Employer's building, not a block away as in *Ortt*. On this basis, the WCJ granted the claim petition and again concluded that Employer's contest was unreasonable.

Employer appealed to the WCAB, which affirmed in all respects, except for the amount of counsel fees awarded by the WCJ. In that regard, the WCJ remanded for findings of fact to justify the counsel fee award. Following remand and further appeal, the WCAB affirmed the WCJ's granting of the claim petition. Employer now petitions this court for review.[1]

Employer argues that the WCAB and WCJ erred in concluding that Claimant was injured on Employer's "premises" under *Ortt*. We disagree.

In *Ortt*, this court stated that, where a claimant is not actually engaged in the furtherance of an employer's business or affairs, the claimant must satisfy

[1] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

the following elements to receive benefits for an alleged work-related injury: (1) the injury must have occurred on the employer's premises; (2) the employee's presence thereon was required by the nature of his or her employment; and (3) the injury was caused by the condition of the premises or by the operation of the employer's business thereon. *Ortt*.

The term "premises" means that the area where the injury occurred was owned, leased or controlled by the employer to a degree where that property could be considered an integral part of the employer's business. *Id.* A parking lot is not integral to an employer's business where: (1) the parking lot is owned and operated by a third party who is responsible for snow and ice removal; (2) the employer reserves spaces for its employees; (3) parking in the lot is optional, not required, and is based on space availability; (4) employees who choose to park in the lot are responsible for paying, in part, for the parking space. *Id.*

Here, the record shows that Employer leases its building from a third party (Landlord). The Landlord provides free parking to Employer and employees through the lease, and the lease specifically states that employees of Employer shall park only in the areas designated by the Landlord. Those designated parking areas include the parking lot where Claimant was injured. In fact, new employees who drive to work are told to use one of the designated parking lots. (R.R. at 25a, 27a-28a, 81a.) Because the parking lot in this case is actually provided through the lease for Employer's building, and the lease requires employees to park in certain areas, including this lot,[2] we conclude that the WCAB and WCJ did not err in

[2] Employer points out that Claimant was not required to park in the particular lot where she was injured and that Claimant could have parked in one of the other designated areas. However, because the question is whether the parking lot is an integral part of Employer's business and because the parking lot is one of the designated areas in Employer's lease agreement for the building, it is an integral part of Employer's business.

concluding that the parking lot is an integral part of Employer's business.[3]

Employer next argues that the WCAB and WCJ erred in concluding that Employer's contest was unreasonable. We disagree. As stated in *Ortt*, the question was whether Employer leased the parking lot to a degree where it could be considered an integral part of Employer's business. Because of the controls on parking set forth in the lease in this case, that question was never in doubt.

Accordingly, we affirm.

KEITH B. QUIGLEY, Senior Judge

[3] In arguing otherwise, Employer focuses on the fact that it did not own the parking lot and that the Landlord was responsible for snow and ice removal. However, this factor is not dispositive under *Ortt*. As indicated, the parking lot was integral to Employer's business because, in order to conduct business out of the leased building, Employer had to require that its employees park in one of the designated areas.

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O R D E R

AND NOW, this 20th day of January, 2010, the order of the Workers' Compensation Appeal Board, dated May 5, 2009, is hereby affirmed.

KEITH B. QUIGLEY, Senior Judge