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Test Your OHS I.Q.: Is Worker's Injury Compensable if She Slips and Falls while Getting Lunch from Her Car?

SITUATION

A security officer leaves her guard shack while on duty to get her lunch from her car, which was parked on a nearby street. She also plans to move the car to her employer's parking garage, because the employer lets security workers park in the garage after office workers have left for the day, creating vacancies. To get to her car, the officer leaves the employer's premises and crosses an adjacent parking lot owned by another company. Other workers routinely use this short cut to enter and exit the employer's site. While walking on the other company's lot, she slips and falls on ice and is injured. The officer files a workers' comp claim for her injury. Her employer argues that her injury shouldn't be covered because she was getting her lunch, not working, at the time of injury.

QUESTION

Is the officer's injury compensable?

- A. Yes, because the officer was injured during working hours.
- B. Yes, because injuries suffered during meal breaks are compensable.
- C. No, because only injuries sustained on employer-owned or controlled premises are compensable.
- D. No, because the officer was hurt on another company's property while doing a personal errand.

ANSWER

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D. The officer was performing a personal errand off the employer’s premises so her injury didn’t arise out of or occur in the course of employment.

EXPLANATION

This hypothetical is based on a decision by the Appeals Commission for Alberta Workers’ Compensation in which the Commission concluded that when the worker was injured, she was on a personal errand to retrieve her lunch and move her car. In addition, the ice causing her fall wasn’t a workplace hazard for which her employer was responsible because it was on property that wasn’t owned or controlled by her employer. The Commission agreed that the worker’s injury did occur while she was on duty and that she had permission to go to her vehicle. But she wasn’t required to cross that parking lot as part of her job and she wasn’t performing work-related duties at the time she fell, the Commission said. Thus, the Commission concluded that the incident didn’t “happen at a time and place consistent with the obligations and expectations of employment.”

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because an injury isn’t necessarily compensable just because it occurs while the worker’s on duty. To be covered by workers’ comp, an injury must arise out of and occur in the course of employment. An incident arises out of a worker’s employment when it’s caused by an employment hazard and occurs in the course of performing work duties. Workers can remove themselves from the course of employment by their actions, [such as by engaging in non-work-related activity or fooling around](#), even while they’re on duty and even if they’re in the workplace. In this case, the officer had left the employer’s property to get her lunch and move her car—which are personal, not work-related, tasks. And she fell on property that wasn’t part of

her workplace. So the officer had removed herself from the course of her employment when she crossed that parking lot to run her errands, meaning her injury wasn't compensable.

B is wrong because not all injuries occurring during a meal break are compensable, although some may be. When considering whether a worker's injury suffered while she was, say, having lunch, is covered by workers' comp, courts and board will consider where and when the injury occurred and exactly what the worker was doing at the time. (See, "[Winners & Losers: Does Workers' Comp Cover Injuries Suffered During a Meal Break?](#)" July 2008, p. 16.). Here, the officer's injury occurred while she was on duty but on another company's property. And at the time, she wasn't doing anything related to her job—she was doing personal errands.

C is wrong because injuries suffered at a location not owned or controlled by the employer could still be compensable if the worker's employer required him to be at the location and he was performing work-related duties at the time. There must be a connection between the location where the injury occurred and the worker's employment. For example, [a delivery company's driver injured on another company's property while making a delivery has a compensable injury](#). In this case, the officer wasn't performing a work-related task and wasn't required as part of her work duties to be in the parking lot when she fell. So the injury didn't arise out of her employment and isn't compensable.

SHOW YOUR LAWYER

[Decision No. 2014-0050](#), [2014] CanLII 1744 (AB WCAC), Jan. 20, 2014