



OCT 29 2007

Reply to the attention of:

COPY

Mr. Richard T. Weber
Director, Safety, Health, &
Environmental Affairs
Flakeboard
100 Kingsley Park Drive
Fort Mill, SC 29715

Dear Mr. Weber:

Thank you for your letter of June 4, 2007 in which you provided the additional information we requested for an electronic e-correspondence Serial # 134670 dated May 15, 2007 and responded to on May 24, 2007. You requested guidance on the recordability of an employee injury resulting from a car fire in the company parking lot when the employee was on a paid company break.

In your letter, you state that an employee was on a paid company break when he went out to his personal car to get something to eat. The employee decided to move his car to a closer parking spot on company owned property. After moving his car, the employee turned off the ignition, then back on, to listen to the radio.

The employee was resting in his car, eating a sandwich and listening to the radio, when the car began to fill up with smoke. Your letter indicates that the employee panicked and was unable to open the car door, so he climbed out the vehicle's window. After multiple attempts by company employees failed, the local fire department was called and they extinguished the vehicle fire.

At some point, the employee complained that his chest was hurting when he tried to breathe and fire department personnel treated him at the scene for mild smoke inhalation. The fire department personnel also suggested to the employee that he go to the local hospital to be examined by a physician. At the hospital, the employee was given a prescription pain medication. The cause of the fire was later determined to be an unidentified malfunctioning vehicle electrical component.

Question

Is this a recordable injury since at the time of the vehicle fire the employee was "resting" in his personal car located in the company parking lot? Does it matter whether the cause of the fire was determined to be a malfunctioning electrical component in the employee's personal car, and the smoke inhalation was caused by the employee panicking and his inability to open the car door?

Response

Yes, the case is recordable.

Work-relatedness is presumed under Part 1904 for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Section 1904.5(b)(2) specifically applies. This approach is consistent with the no-fault recordkeeping system OSHA has historically adopted, which includes work-related injuries and illnesses, regardless of the level of employer control or non-control involved. Section 1904.5(b)(1) defines the work environment as the establishment and other locations where one or more employees are present as a condition of their employment.

Many circumstances that lead to a recordable work-related injury or illness are "beyond the employer's control." Nevertheless, because such an injury or illness was caused contributed to, or significantly aggravated by an event or exposure at work, it must be recorded on the OSHA 300 Log, provided it meets one or more of the recording criteria in Section 1904.7. We note that your letter indicated that the employee was provided with prescription pain medication at the hospital, and therefore met the recording criteria for medical treatment in Section 1904.7. Also, see OSHA's preamble to the January 19, 2001 final rule revising OSHA Part 1904 regulation at 66 Fed. Reg. 5986.

The concept of fault has never been a consideration in any occupational injury and illness recordkeeping system of the U.S. Department of Labor (i.e., the Bureau of Labor Statistics [BLS] or Occupational Safety and Health Administration [OSHA]). Both the Note to Subpart A of Part 1904 and the OSHA Form 300 expressly state that recording. In addition, OSHA recognizes that injury and illness rates do not necessarily indicate a lack of interest in safety and health or success or failure per se. OSHA feels it is to the benefit of all parties to go beyond the numbers and look at an employer's safety and health program.

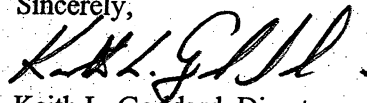
As noted above, for OSHA a recordkeeping purpose, a work relationship is presumed unless an exception in Section 1904.5(b)(2) specifically applies. Section 1904.5(b)(2)(v) does provide limited flexibility to exclude injuries and illnesses from the OSHA 300 Log in situations where the employee is using the employer's establishment for purely personal reasons during his or her off-shift time. For example, if an employee were using a meeting room at the employer's establishment outside of his or her assigned working hours to hold a meeting for a civic group to which he or she belonged, and slipped and fell in the hallway, the injury would not be considered work-related. The exception in Section 1904.5(b)(2)(v) would not apply in your scenario because the employee was injured during his assigned working hours.

Furthermore, Section 1904.5(b)(2)(vii) allows employers to exclude cases where an employee is injured in a motor vehicle accident while commuting from work to home or from home to work or while on a personal errand. For example, if an employee was

injured in a car accident while arriving at work or while leaving the company's property at the end of the day, or while driving on his or her lunch hour to run an errand, the case would not be considered work-related. We note that the case in your scenario did not result from the employee being injured in a motor vehicle accident while he was commuting to or from work or while driving to or from company property to run an errand.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Section 8(c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard", with a stylized flourish at the end.

Keith L. Goddard, Director
Directorate of Evaluation and Analysis