# United States Department of Labor
# Employees' Compensation Appeals Board

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| **J.C., Appellant** | ) | |
| **and** | ) | **Docket No. 19-1940** |
| | ) | **Issued: February 10, 2021** |
| **U.S. POSTAL SERVICE, LANSING VEHICLE MAINTENANCE FACILITY, Lansing, MI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.,* for the appellant[1]
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 23, 2019 appellant, through counsel, filed a timely appeal from an August 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1940.

On May 16, 2018 appellant, then a 53-year-old vehicle maintenance facility (VMF) technician, filed a traumatic injury claim (Form CA-1) alleging that at 7:30 a.m. on April 26, 2018 he hyperextended his left knee when he tripped on a ground rod and wire in a dark parking lot of

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

the Grand Ledge Post Office (Grand Ledge) while in the performance of duty.[2] On the reverse side of the claim form, the employing establishment, Lansing VMF, indicated that appellant was injured in the performance of duty on April 26, 2018 and stopped work on that date. It stated that it received notice of appellant's injury on April 26, 2018, and it listed his regular work schedule as Monday through Friday from 6:00 a.m. to 2:30 p.m. The employing establishment indicated that its knowledge of the facts about appellant's injury agreed with appellant's statements. On May 17, 2018 appellant's supervisor C.V. signed the claim form and certified that the information given by the employing establishment and appellant was true to the best of his knowledge.

On May 17, 2018 the employing establishment controverted the claim and noted that appellant's job consisted of traveling to different employing establishment facilities to work on vehicles in need of repair. It indicated that appellant's supervisor C.V. provided a timeline of appellant's duties for the date of April 26, 2018 which it alleged was evidence that appellant had not conducted vehicle repairs in Grand Ledge on April 26, 2018. The employing establishment also noted that appellant submitted medical records which indicated that he was injured on April 23, 2018.[3] It concluded that appellant therefore had not established fact of injury, performance of duty, or causal relationship.

A May 17, 2018 e-mail from appellant's supervisor, C.V., indicated that on April 26, 2018 appellant only worked at the Holt, Eaton Rapids, and the employing establishment. C.V. noted that on April 26, 2018 appellant drove an employing establishment vehicle to the Holt VMF where he checked the oil of another employing establishment vehicle. Appellant then shuttled an employing establishment vehicle to the Eaton Rapids VMF where he checked the transmission fluid in another employing establishment vehicle. C.V. noted that appellant then repaired a window regulator and attended a meeting at the employing establishment.

By decision dated July 9, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish the factual component of fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 26, 2019 appellant, through counsel, requested reconsideration.

In support of his reconsideration request, appellant submitted an undated work order for a preventative maintenance inspection for postal truck 8204426. The start date for the inspection

[2] On April 23, 2018 appellant filed an additional traumatic injury claim, assigned OWCP File No. xxxxxx228, alleging that he sustained a left knee strain while in the performance of duty on November 24, 2017. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018). The Board therefore concludes that the case records for OWCP File Nos. xxxxxx228 and xxxxxx682 should be administratively combined upon return of the case record.

[3] *Id*.

was noted as April 19, 2018 and the end date was noted as April 30, 2018. The "VPO [Village Post Office]" was listed as "488379998-Grand Ledge-263900."

Appellant also submitted a vehicle pick/up return sheet dated April 19, 2018 which indicated that he had picked up and returned vehicles in Grand Ledge.

By decision dated August 12, 2019, OWCP modified its July 9, 2018 decision finding that the evidence of record established that the incident occurred as alleged. It therefore found that appellant had established that he hyperextended his left knee over a ground rod while climbing into a vehicle in the Grand Ledge parking lot on April 26, 2018 at 7:30 a.m. OWCP however also found that appellant had not established that the incident occurred in the performance of duty as appellant had not established why he was at the Grand Ledge facility at 7:30 a.m. on April 26, 2018.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP for further development.

The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated: "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be [stated] to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[6] In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[4]

OWCP's procedures explain that certain categories of employees work on employing establishment premises for part of the day, and are required to travel for other parts of the working day. Claims for these employees when the alleged injury occurs on premises will be adjudicated in accordance with principles for all-on-premises injuries.[5] These procedures further provide that if the injury occurs on employing establishment premises, the alleged injury will be considered in the performance of duty if the employee was performing assigned duties, or was engaged in an activity reasonably incidental to the employment.[6] An affirmative response by the official superior on the claim form is sufficient to establish that the employee was in the performance of duty, unless the facts or other evidence indicate that the answer may not be correct. OWCP's procedures also

[4] *C.C.*, Docket No. 18-0445 (issued August 14, 2018); *Mark Love*, 52 ECAB 490 (2001).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(c) (August 1992).

[6] *Id.* at Chapter 2.804.4(a).

provide that if conflicting statements are obtained from the official superior as to whether appellant was performing regular work at the time of the injury, a conference should be held.[7]

While OWCP has accepted that the incident occurred as alleged and the employing establishment contemporaneously provided an affirmative response from appellant's supervisor that the incident occurred in the performance of duty, the employing establishment subsequently controverted the claim, by appellant's supervisor's statement indicating that appellant had not established that he was required to be at the Grand Ledge facility on the morning of April 26, 2018 to perform work duties. Appellant has however submitted evidence that a work order existed for vehicle maintenance work at the Grand Ledge facility from April 19 to 30, 2018. Since the evidence of record contains conflicting statements as to whether appellant was required to be at the Grand Ledge facility on April 26, 2018 to perform work activities, and that he was therefore in the performance of duty at the time of the accepted incident, this case will be remanded.

On remand OWCP shall properly consider all the evidence submitted at the time of the August 12, 2019 decision and to schedule a conference to clarify whether appellant sustained an injury in the performance of duty on April 26, 2018. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the claim. Accordingly,

**IT IS HEREBY ORDERED THAT** the August 12, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.[8]

Issued: February 10, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[7] *Supra* note 5 at Chapter 2.804.4(c); *see also O.L.*, Docket No. 16-0840 (issued August 28, 2017).

[8] Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the order, was no longer a member of the Board after January 20, 2021.