

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

R.H., Appellant)	
)	
and)	Docket No. 20-1011
)	Issued: February 17, 2021
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 8, 2020 appellant filed a timely appeal from a March 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on January 23, 2020, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the March 30, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 29, 2020 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that at 5:02 a.m. on January 23, 2020 she sustained a contusion with skin intact on her right knee as a result of a “plastic strap from bundle” while in the performance of duty. On the reverse side of the Form CA-1, appellant’s supervisor, A.M., indicated that appellant’s regular work hours were from 5:30 p.m. to 2:00 a.m. She acknowledged that the claimed injury occurred on January 23, 2020, but contended that appellant was not injured in the performance of duty as alleged as she had “just clocked out” when she tripped and fell and did not want to file a claim until January 27, 2020 after seeing her physician.

In a January 23, 2020 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical treatment for her alleged injury.

Appellant, in a January 24, 2020 narrative statement, explained that she was evaluated by her physician, Dr. Karla L. Houston-Gray, an internist, who advised that her right knee was very swollen and bruised from her fall. Dr. Houston prescribed medication and recommended that appellant stay off her knee for the rest of the week. She also recommended that appellant file a workers’ compensation claim for her injury since appellant was injured on the employing establishment’s property.

In a January 27, 2020 employee statement, appellant noted that at approximately 5:02 a.m. on January 23, 2020 she was walking toward the exit doors as she headed home when she tripped on a plastic strap that kept bundles together and fell very hard on her right knee.

In support of her claim, appellant submitted a January 27, 2020 emergency department work status report which noted the date of onset of her condition as that date. The report also noted that she was sent home for the remainder of her shift. Appellant was advised to return to work on January 30, 2020.

OWCP subsequently received additional medical evidence including, a January 31, 2020 medical report by Dr. Temesgen Wakwaya, Board-certified in preventive, occupational, and environment medicine, who noted a history of employment injury of falling onto the ground at work on January 23, 2020 and that appellant presented with right knee pain. Dr. Wakwaya discussed examination findings and provided an assessment of contusion of the right knee, initial encounter. He released appellant to return to full-time modified-duty work with restrictions as of the date of his examination. In additional reports dated February 3 and 7, 2020, Dr. Wakwaya noted that appellant presented for follow up of her right knee contusion. He also noted that her history of injury was previously documented. Dr. Wakwaya provided examination findings and reiterated his prior assessment of right knee contusion, initial encounter. Additionally, he provided an assessment of patellar tendinosis. Dr. Wakwaya continued to advise that appellant could perform full-time modified-duty work with restrictions.

In a January 27, 2020 emergency room record, Molly K. Kurtz, a certified physician assistant, noted a history of employment injury of appellant falling at work on January 23, 2020. She provided examination findings and assessments of contusion and pain of the right knee, fall, and hypertension.

OWCP, in a February 21, 2020 development letter, advised appellant that when her claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. It advised appellant of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion to provide further details regarding the circumstances of her claimed injury. OWCP also requested that the employing establishment provide medical evidence, if appellant had been treated at its medical facility. It afforded both parties 30 days to submit the necessary factual and medical evidence.

OWCP thereafter continued to receive medical evidence, including additional reports dated February 12, 19, and 26, and March 4, 11, and 18, 2020 from Dr. Wakwaya. In these reports, Dr. Wakwaya restated that appellant's history of employment injury was "previously documented." He reported examination findings and reiterated his prior assessments of right knee contusion and patellar tendinosis and opinion that appellant could perform full-time modified-duty work.³

By decision dated March 30, 2020, OWCP denied appellant's traumatic injury claim, finding that the factual component of fact of injury had not been established. It noted that she had not responded to its February 21, 2020 development letter requesting specific factual information regarding the claimed injury. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

The phrase "sustained 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

³ On February 28, 2020 the employing establishment offered appellant a modified-duty assignment which she accepted on that date.

⁴ *Supra* note 1.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

out of and in the course of employment.”⁸ To arise 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 the master’s business; (2) at a place when he or she may reasonably be expected to be in connection with his or her employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁹ In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.¹⁰

It is well established as a general rule of workers’ compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours or at lunch time, are compensable.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

Whether an injury occurs in the performance of duty is a preliminary issue to be addressed before the remaining merits of the claim are adjudicated.¹² Appellant indicated in her January 29, 2020 claim form that she injured her right knee tripping on a plastic strap from a bundle at 5:02 a.m. on January 23, 2020 while in the performance of duty. Also, in a January 27, 2020 employee statement, she attributed her claimed right knee injury to tripping on a plastic strap at work on January 23, 2020. On the reverse side of the claim form, appellant’s supervisor, A.M., controverted appellant’s claim by asserting that she was not in the performance of duty when injured because she had clocked out of work at the time of injury, noting that her work schedule was 5:30 p.m. to 2:00 a.m. She, however, acknowledged that appellant tripped and fell at work on January 23, 2020. The Board finds that OWCP has not adequately developed this aspect of appellant’s claim.

In a February 21, 2020 development letter, OWCP requested additional factual and medical evidence from appellant, noting that the evidence of record was insufficient to establish that the alleged injury occurred in the performance of duty. It provided a questionnaire for appellant’s completion for her completion posing specific questions regarding the factual circumstances of the alleged January 23, 2020 work incident. OWCP, however, did not send a development letter to

⁸ *C.L.*, Docket No. 19-1985 (issued May 12, 2020); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

⁹ *S.V.*, Docket No. 18-1299 (issued November 5, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

¹⁰ *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *M.W.*, Docket No. 15-0474 (issued September 20, 2016); *Mark Love*, 52 ECAB 490 (2001).

¹¹ *R.K.*, Docket No. 18-1269 (issued February 15, 2019); *Narbik A. Karamian*, 40 ECAB 617, 618 (1989); *Eileen R. Gibbons*, 52 ECAB 209 (2001).

¹² *S.T.*, Docket No. 20-0388 (issued September 16, 2020); *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

the employing establishment asking it to provide further specific information about the factual aspects of appellant's claim. The Board finds that OWCP failed to address and develop the issue of whether appellant was in the performance of duty at the time of her injury. The Board did not ask either appellant or the employing establishment to explain whether appellant was still on the premises at the time of the alleged work incident, and if so, why she was on the employing establishment premises three hours and two minutes after the end of her work shift. Without this information, the case record is incomplete.

OWCP's procedures provide that it should obtain relevant information from an official superior if it requires clarification before determining whether or not the employee was on the premises.¹³ Its procedures further provide that it should obtain relevant information from an official superior to determine why an employee was on the premises for more than "reasonable interval" after the end of his or her work shift.¹⁴ OWCP's procedures also provide that if the supervisor is unaware of why the employee was on the premises, OWCP should seek this information from coworkers and procure a statement from the injured employee.¹⁵

As OWCP failed to request all the information as required under its procedures, the Board will remand the case for OWCP to further develop the question of whether appellant was in the performance of duty when injured on January 23, 2020. On remand it shall obtain all relevant information from appellant and the employing establishment necessary to determine whether appellant was injured in the performance of duty after clocking out of work on January 23, 2020. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4.b (August 1992).

¹⁴ *Id.* at Chapter 2.804.4.a(3) (August 1992).

¹⁵ *Id.* at Chapter 2.804.4.c (August 1992).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 17, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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