

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

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**S.D., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
COMMUNICATIONS SECURITY LOGISTICS  
ACTIVITY, Fort Huachuca, AZ, Employer**

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**Docket No. 10-1391  
Issued: August 24, 2011**

*Appearances:*  
*Gregory A. Hall, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 27, 2010 appellant filed a timely appeal from the November 2, 2009 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an August 7, 2008 work injury. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 7, 2008.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

## **FACTUAL HISTORY**

On August 10, 2008 appellant, then a 61-year-old logistics management specialist, filed a traumatic injury claim alleging that she sustained injury to her head, low back, buttocks and left leg due to a fall at work on August 7, 2008 at 5:20 a.m.<sup>3</sup> Regarding the cause of the injury, she stated, "I arrived first and was sitting in lobby reading. Betsey Hermes arrived and couldn't get in. After several tries I got up to let her in the side door. The side door wouldn't open. The revolving door finally moved and I stepped back losing my balance, falling on the floor and hitting my head on the desk." Appellant indicated that she landed on her buttocks when she fell to the floor. She stopped work on August 7, 2008 and Mark Tiefel, her supervisor indicated on the claim form that she would receive continuation of pay. Appellant filed a claim for total disability compensation for the period September 22 to October 4, 2008.

Appellant submitted medical records and treatment notes dated August 7 to September 24, 2008 from the Sierra Vista Regional Health Center, an ambulance transport service and Dr. David Knapp, an attending Board-certified internist. X-ray testing of her left tibia from August 7, 2008 showed soft-tissue swelling but no acute fracture. On September 30, 2008 Dr. Knapp advised that appellant could return to work on October 6, 2008.

OWCP's claims examiner telephoned Mr. Tiefel on October 2, 2008 and asked him questions about the fact that appellant arrived at work approximately 45 minutes before her starting time on August 7, 2008. OWCP's claims examiner detailed Mr. Tiefel's response, "He notes they usually open the doors at 5:45 [a.m.] and the employees come in and take care of personal business, such as getting coffee, so they can start work promptly at [6:00 a.m.]" During an October 2, 2008 telephone call, OWCP's claims examiner asked appellant why she came to work early on August 7, 2008 and she responded that she usually came in early to work and read until her shift began.

In an October 8, 2008 decision, OWCP denied appellant's claim that she sustained an injury while in the performance of duty on August 7, 2008. It found that at the time of her accident on August 7, 2008, she was not performing her work duties or engaged in an activity incidental to her work duties.

Appellant submitted a November 24, 2008 statement regarding her work injury of August 7, 2008. She noted a permanent impairment to the left side of her body which caused her to walk with a cane and to walk more slowly than nondisabled people. Appellant stated that she attempted to arrive at the parking lot at work early (about 5:15 a.m.) so that she could get one of the few parking spaces for disabled people that was less than a 100 feet away from Greely Hall, her workplace. If she did not get one of the closer spaces, she had to walk 100 yards or more to get to Greely Hall and it became substantially more difficult for her to get to her desk by 6:00 a.m. For the past two years, appellant had been arriving at the facility at about 5:15 a.m. and

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<sup>3</sup> The form indicates that appellant's regular work hours were 6:00 a.m. to 3:30 p.m.

stated that Mr. Tiefel knew that she reported to work at this hour. There were about four to five other coworkers who also reported to work around this time and she believed that these coworkers also had start times of 6:00 a.m. Appellant stated:

“The reason I get to work at about 5:15 a.m. is so that I can be at my desk by 6:00 a.m. Besides taking into consideration the extra time it takes to get to my desk because of my disability, before starting my day I have to pass through four doors which are secured, I have to log in to three computers, two of which are secure, and depending on projected work load I may have to open as many as two safes. I also check for phone messages, e-mails and messages received during the night. Once I do all of that, then I am ready to receive calls at my desk. I make every effort to be at my desk to receive calls by 6:00 a.m. which my official start time. I am not paid for any of the incidental work I do before 6:00 a.m. In my opinion if I didn’t report to work early I would not be ready to perform my job at 6:00 a.m.

“On August 8, 2008 I arrived at work at about 5:15 a.m., per my usual routine. I found a disabled parking spot close to Greely Hall and I got into the building where I have to go through the handicap biometrics door (which requires an eye scan or fingerprint) and proceeded to open the second door that has a combination lock. I then turned off the security alarm in preparation, which is an incidental duty to my position. At this time, another employee, Ms. Betsy Hermes was trying to gain access through the revolving biometric door, which is just adjacent to where I was standing. Betsy tried three or four times to gain access using the eye scan. Since it wasn’t working I tried to let her in the handicap door, which was now not working either. All of a sudden the revolving door started and when I tried to get out of the way I fell over backwards, hitting my head on the desk and landing on my rear end. In effect, I got hurt trying to help a co-employee navigate the security door which had apparently malfunctioned. Helping a coworker is not in my job description, but it is an incidental duty to my position.”

In a November 24, 2008 letter, Mr. Tiefel stated that he was appellant’s supervisor. He reviewed her November 24, 2008 statement regarding the events of August 7, 2008 and stated:

“I agree with the representations [appellant] has made in this Declaration. In particular, I know that [appellant] reports to work for a shift that starts at [6:00] a.m. The [Communications Security Logistics Activity (CSLA)] allows us to open the combination lock door to the work area at [5:45 a.m.], in order for the employees to get to their desks and be ready to work at [6:00 a.m.]. From the time [appellant] arrives in the morning until she leaves she is either working or performing tasks incidental to her job. There is no question that the CSLA benefits from [appellant] reporting to work prior to her official start time.”

In a December 4, 2008 statement, Ms. Hermes stated that she worked under the CSLA with appellant and that, when she was not on travel duty, she worked in the same building, Greely Hall. She indicated that she and several coworkers reported to work between about 5:00 and 5:30 a.m. even though their official start time was not until 6:00 a.m. Ms. Hermes asserted that there was no prohibition against reporting to work at this time of day and she felt that the

CSLA gained a benefit from this practice because the employees who showed up early tended to be the ones who got to their workstations on time. She arrived at the biometric security entrance of the CSLA at approximately 5:25 a.m. on August 7, 2008 and saw that appellant was already there and had opened the interior security door. Ms. Hermes attempted to enter the CSLA by using her biometric device at least three times but was unable to enter. She stated that appellant then attempted to help her get through the handicap entrance to the right of the revolving door of the biometric entrance, but the revolving door unexpectedly began to turn and appellant reached for the handicap door in a futile attempt to open it. Appellant fell to the floor landing hard on her left side and buttocks and hit her head on the counter opposite the handicap door while she was falling.<sup>4</sup>

Appellant requested a hearing before OWCP's hearing representative.<sup>5</sup> At the telephone hearing held on February 13, 2009, she testified regarding her duties as a logistics management specialist and the events of August 7, 2008. Appellant provided additional details of her attempts to help Ms. Hermes enter the CSLA office. She stated that she generally arrived at work around 5:15 a.m. so she could open the safes and get her work materials out and be ready for work at 6:00 a.m. Appellant asserted that Mr. Tiefel, was aware of her practice of arriving at work at 5:15 a.m. and that there were about four or five coworkers that came to work early.

In a November 2, 2009 decision, OWCP's hearing representative affirmed the October 8, 2008 decision finding that appellant's injury did not arise in the performance of duty on August 7, 2008. He found that she arrived at work early as a personal convenience and that she was not engaged in any activity incidental to her employment mission at the time of her accident on August 7, 2008.

### **LEGAL PRECEDENT**

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."<sup>6</sup> 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 out of and in the course of employment."<sup>7</sup> The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where she may reasonably be expected to be in connection with the employment and while she was

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<sup>4</sup> Appellant also submitted additional medical evidence in support of her claim.

<sup>5</sup> In an undated letter received by OWCP on January 20, 2009, counsel argued that appellant's injury on August 7, 2008 should be covered because she was performing actions incidental to her work which provided benefits to the employing establishment. He indicated that the benefits provided by her actions included ensuring that the employing establishment work was started on time and promoting the safety of coworkers.

<sup>6</sup> 20 C.F.R. § 8102(a).

<sup>7</sup> *Charles Crawford*, 40 ECAB 474 (1989).

reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.”<sup>8</sup>

The occurrence of an incident on the employing establishment premises which leads to an injury is not sufficient, in itself, to give rise to coverage under FECA as the employee must show not only that the injury encompasses the work setting but also that the employment caused the injury.<sup>9</sup> The facts must show that the injury was sustained within a reasonable time interval of work and that the employer derived a substantial benefit from the activities in which appellant was engaged.<sup>10</sup>

In *T.F.*,<sup>11</sup> the employee sustained injury when she tripped on a loose floor tile some 25 minutes before her work shift began at 6:00 a.m. She was on the premises of her employer in the vicinity of her work cubicle. The Board affirmed the denial of compensability under the statute, noting that the reasons given by the employee for her early arrival at work included being able to find a good parking place, drink coffee, eat breakfast and put her lunch away. The activities in which she was engaged at the time of injury were found personal to the employee and not reasonably incidental to the work of her employer. Moreover, the Board noted that her presence at the premises some 25 minutes prior to the commencement of her work shift did not constitute a reasonable interval under the circumstances. The employee’s presence was not required by her employer, did not pertain to preparatory activities reasonably incidental to her employment as a tax examiner, or provide a substantial benefit to her employer.

### ANALYSIS

On August 10, 2008 appellant filed a traumatic injury claim alleging that she sustained injury to her head, low back, buttocks and left leg due to a fall at the employing establishment premises on August 7, 2008 at 5:20 a.m. The Board notes that the incident giving rise to appellant’s injury occurred, as alleged, on the employing establishment premises. This fact, alone, is not sufficient to give rise to coverage under FECA as the evidence must show that the injury was sustained within a reasonable time interval of work and that the employing establishment derived a substantial benefit from the activities in which she was engaged.<sup>12</sup>

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<sup>8</sup> *Mary Keszler*, 38 ECAB 735 (1987).

<sup>9</sup> See *Howard M. Faverman*, 57 ECAB 151 (2005).

<sup>10</sup> See *William W. Knispel*, 56 ECAB 639 (2005); *Venicee Howell*, 48 ECAB 414 (1997); *Arthur A. Reid*, 44 ECAB 979 (1993); *Nona J. Noel*, 36 ECAB 329 (1984). Compare *John F. Castro*, Docket No. 03-1653 (issued May 14, 2004) with *George E. Franks*, 52 ECAB 474 (2001). In cases concerning what constitutes a reasonable interval before or after work, the Board has been influenced by the activities engaged in by the employees before or after work. In *Howell*, the Board found coverage when the employee was injured five minutes after work while performing the incidental task of submitting a job bid. However, in *Noel*, the Board denied coverage when the employee was injured 90 minutes before work while engaging in the personal activity of eating breakfast.

<sup>11</sup> Docket No. 09-154 (issued July 16, 2009).

<sup>12</sup> See *supra* notes 9 and 10.

The Board notes that evidence of record in the present appeal contains substantially similar pertinent facts to those of the case *T.F.*<sup>13</sup> Appellant stated that she arrived early at work at 5:15 a.m. on most mornings in order to secure a parking space close to her employment at Greely Hall. Her work shift commenced at 6:00 a.m. On August 7, 2008 appellant arrived some 45 minutes before her work shift and proceeded through two security doors.<sup>14</sup> After she arrived, she occupied her time in the lobby reading. Mr. Tiefel, appellant's supervisor noted that a combination lock on the door to the work area itself was not opened for employees until 5:45 a.m.

Ms. Hermes, a coworker, advised that she arrived at the biometric security entrance door at approximately 5:25 a.m. She attempted to use her biometric security device, but was unable to gain entry. At this point, appellant attempted to assist Ms. Hermes make entry to the lobby through the handicap door at the biometric entrance, when the revolving main door began to turn. As she reached for the handicap door, she fell to the floor and sustained injury.<sup>15</sup>

Appellant and her counsel have cited numerous employment-related activities in explanation of her early arrival at work on August 7, 2008. These included logging onto computers, opening safes and checking messages. The fact remains that these were activities appellant could perform only after 5:45 a.m., when the combination locked door was opened and she was provided access to her workspace. At the time of injury, appellant was in the lobby reading after having secured a desired parking space. This was an activity personal to her and not established by the evidence of record as reasonably incidental to her employment, required by her employer or of substantial benefit to her employer.<sup>16</sup> Therefore, the facts of this case do not show that appellant's injury on August 7, 2008 was sustained within a reasonable time interval of work and that the employing establishment derived a substantial benefit from the activities in which she was engaged at the time of the injury.<sup>17</sup> Appellant has not shown that she sustained an injury in the performance of duty on August 7, 2008.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>13</sup> See *supra* note 11.

<sup>14</sup> The record indicates that the CSLA, a sub-agency of the employing establishment, required employees to proceed through four secured entrances to the workplace.

<sup>15</sup> Appellant indicated that her injury occurred at 5:20 a.m. a slightly earlier time than that identified by Ms. Hermes.

<sup>16</sup> See *T.F.*, *supra* note 11. In that case, arriving early to engage in bible study was found not reasonably incidental to the employee's federal employment.

<sup>17</sup> The Board notes that appellant has not presented sufficient precedent to show that her attempt to help Ms. Hermes pass through the biometric door was incidental to her own work duties.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on August 7, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board