

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, DARLINGTON
STATION, Pawtucket, RI, Employer**

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**Docket No. 14-1624
Issued: April 3, 2015**

Appearances:
Robert Donahue, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2014 appellant, through her representative, filed a timely appeal from a June 23, 2014 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on May 2, 2014.

On appeal, appellant asserts that the evidence submitted was sufficient to establish her claim.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 9, 2014 appellant, then a 51-year-old postal clerk, filed a traumatic injury claim alleging that she injured her right knee at 7:20 a.m. on May 2, 2014 when she fell while exiting a vehicle. She claimed to have aggravated previous right knee injuries that had occurred on June 29, 2012 and March 28, 2013. The employing establishment stated that appellant, whose regular-duty hours were 9:00 a.m. to 6:00 p.m., was not on the clock when injured and was coming in to attend a district reasonable accommodation committee (DRAC) meeting.²

In a May 2, 2014 statement, a coworker explained that he had driven appellant to the employing establishment that day for a meeting. They had arrived at 7:15 a.m. for an 8:00 a.m. meeting and, as she was exiting the vehicle at 7:20 a.m., she fell. Emergency medical services (EMS) were called and appellant was transported to a hospital. Appellant submitted a May 2, 2014 statement noting that she was driven to the employing establishment that day for a DRAC meeting. She stated that she exited the vehicle with the help of her coworker and the use of her walker. When she began to walk her right knee gave out and she fell to the ground and was transported to the hospital.

By letter dated May 16, 2014, OWCP informed appellant of the type evidence needed to support her claim. Appellant was instructed to furnish information regarding the meeting scheduled at 8:00 a.m., including why she arrived 45 minutes early, and to furnish medical information regarding the claimed injury. She was also asked to describe the prior injuries that had occurred on June 29, 2012 and March 28, 2013. In separate correspondence the employing establishment was asked whether appellant was required to attend the DRAC meeting scheduled for May 2, 2014 and whether at the time of injury she was engaged in official duties that required her to be on the employing establishment premises.

In an April 7, 2014 letter, the chairperson of DRAC advised appellant that a meeting would be held at 8:00 a.m. on Friday, April 18, 2014 to discuss her request for reasonable accommodation. She was advised that her participation in the process was necessary and she should be prepared to discuss her medical condition, limitations, and any reasonable accommodations she believed were appropriate.³

Appellant submitted factual and medical evidence regarding previous claims. This included reports dated April 1 and May 6, 2013 in which Dr. Michael P. Mariorenzi, an attending Board-certified orthopedic surgeon, noted a history of injuring her right knee when she tripped over a tub of mail on June 29, 2012. He diagnosed traumatic patella femoral chondromalacia of the right knee and advised that appellant was totally disabled. In a September 3, 2013 report, Dr. Medhat A. Kader, an OWCP referral physician and Board-certified orthopedist, diagnosed progressive osteoarthritis of the right knee and advised that the condition was not related to

² Appellant has four additional claims injuries of June 29, 2012 and March 28, 2013 which were denied. She had been in a nonwork status since March 2013.

³ An April 30, 2014 e-mail indicates that the meeting was held as scheduled and appellant was informed that she had provided insufficient medical requirements or restrictions, and a second meeting was scheduled on May 2, 2014 at 8:00 a.m.

employment. An October 5, 2013 letter or warning was issued for failure to be regular in attendance.

A May 2, 2014 EMS report reflected that appellant was transported to Memorial Hospital after a fall to the ground when her right knee gave out. On a duty status report dated May 13, 2014 Dr. Mariorenzi noted that she had fallen on May 2, 2014 and provided restrictions to her physical activity. In a June 3, 2014 report, he noted seeing appellant on May 13, 2014 with respect to the aggravation of her right knee due to a May 2, 2014 fall at the employing establishment. Dr. Mariorenzi indicated that she had been out of work due to a more significant injury that had occurred about two years previously and was still in contention. He recommended an arthroscopy based “on the initial injury which occurred on June 12, 2014 [sic] when she tripped over a bucket at work.” Dr. Mariorenzi concluded:

“The fall markedly increased her pain acutely. As such, this becomes an aggravation of her preexisting condition. The aggravation is a result of the fall on May 2, 2014. The original condition is a result of the work-related event of June 2, 2014. [sic]”

He reiterated his conclusions in a duty status report dated May 10, 2014.

Appellant also submitted e-mails dated April 21 to June 1, 2014. This included correspondence with union and other representatives. She discussed her previous claims and the DRAC meeting. Appellant stated that she had not requested DRAC accommodation but was ordered by the union to appear at 7:00 a.m. On April 30, 2014 the union advised her of the medical evidence needed for the DRAC meeting. On May 1, 2014 appellant inquired as to why her presence was required at the meeting and a union representative advised her to attend the meeting. He stated that it was not an OWCP matter because appellant did not have an accepted claim. The president of the union advised appellant on May 1, 2014 that she and another union officer would meet with appellant at 7:00 a.m. prior to the 8:00 a.m. meeting. Appellant’s representative discussed appellant’s previous claims and disagreed with the employing establishment’s actions. He believed that the employing establishment should have provided a modified job to appellant.

On May 7 and 8, 2014 a labor and employment lawyer representing the union advised appellant that the union local did not represent her in relation to any OWCP matter, noting that she had her own designated representative. The union lawyer also indicated that, because the May 2, 2014 DRAC meeting was cancelled and appellant had provided no information that would support a conclusion that there was any accommodation the employing establishment could provide, it appeared that the DRAC was unable to assist her and the union was assessing next steps with regard to its involvement in the DRAC process. Appellant’s representative took her to the employing establishment on May 9, 2014 to file the instant claim. In additional e-mails, both he and appellant continued to assert that the May 2, 2014 injury was employment related.

On June 1, 2014 appellant’s representative asserted that the evidence submitted was sufficient to establish appellant’s claim because she was required to attend the DRAC meeting on May 2, 2014. On June 2, 2014 appellant asserted that she was instructed by union

representatives to be at the employing establishment at 7:00 a.m. on May 2, 2014 and that she had never requested DRAC accommodation.

By decision dated June 23, 2014, OWCP denied appellant's claim because she failed to submit sufficient evidence to establish that the injury occurred in the performance of duty. It noted that the injury occurred at 7:20 a.m. when she was in nonpay status, that she was not scheduled to work on May 2, 2014, that she was scheduled to attend a DRAC meeting, where her attendance was optional, and was not performing any employment duties at the time of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁵ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

It is the claimant's burden of proof to submit sufficient evidence necessary for OWCP to make a determination as to whether an employment incident occurred as alleged. The evidence must be sufficient to establish whether the claimant was in the course of federal employment at the time of the incident, so that a proper determination may be made as to whether an injury occurred while in the performance of duty.⁷ As to the phrase in the course of employment, the Board has accepted the 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

⁴ Gary J. Watling, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.5(ee); Ellen L. Noble, 55 ECAB 530 (2004).

⁶ *Supra* note 4.

⁷ T.S., Docket No. 09-2184 (issued June 9, 2010).

at lunch time, are compensable.⁸ An injury is said to arise in the course of employment when it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling employment duties or is engaged in doing something incidental thereto. Arising out of employment relates to the causal connection between the employment and the injury claimed.⁹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not established an employment-related injury on May 2, 2014. The injury in this case occurred on the premises of the employing establishment. This factor alone, however, is not sufficient to establish entitlement to benefits as the concomitant requirement of an injury “arising out of the course of employment” must be shown. This encompasses not only the work setting but also a causal concept, *i.e.*, in order for an injury to be considered as arising out of employment, the facts must show a substantial employer benefit or requirement which gave rise to the injury.¹³ It is incumbent upon a claimant to establish that the claimed injury arose out of employment.¹⁴

The facts in this case indicate that appellant was injured when she fell at an employing establishment facility at 7:20 a.m. on May 2, 2014 when she went to attend a union-called DRAC meeting being held at 8:00 a.m. to determine reasonable accommodation for a nonwork-related right knee condition. Her injury did not occur at a time when one could reasonably say she was engaged in her employer’s business. Appellant’s presence on the employing establishment’s premises alone was not sufficient to establish entitlement to compensation. Appellant was at the employing establishment facility solely for personal reasons. She was not scheduled for work and her attendance at the meeting was not a requirement of employment. While the DRAC committee and appellant’s union representative advised her to attend the

⁸ *F.S.*, Docket No. 09-1573 (issued April 6, 2010).

⁹ *B.C.*, Docket No. 09-653 (issued December 24, 2009).

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *Paula G. Johnson*, 53 ECAB 722 (2002).

¹⁴ *Id.*

meeting to ensure that her request for accommodation could be fully addressed, the meeting itself was to determine if reasonable accommodation could be made for a nonwork-related injury. Appellant has asserted that she had not requested reasonable accommodation. However, her representative indicated that she requested modified duty, and her previous claims for right knee injuries had been denied. Moreover, appellant attended a previous DRAC meeting on April 18, 2014.¹⁵

In this case the facts indicate that union representatives requested that appellant meet with them at 7:00 a.m. In the case *Larry D. Passalacqua*,¹⁶ the Board held that participation in union activities generally is not considered to be within an employee's course of employment or performance of duty.¹⁷ The Board noted an exception where the activity undertaken by the employee was in his or her capacity as a union official and simultaneously served the interest of the employer.¹⁸ Such is not the case here as appellant was not a union official. Thus, this exception would not apply. In the case *George A. Rodriguez*,¹⁹ the Board held that a meeting to address a new work schedule was not in the performance of duty because it was voluntary and not required by the employing establishment, and the Board found that OWCP properly rescinded acceptance of appellant's claim.²⁰

As in the case *E.S.*,²¹ here the evidence establishes that appellant was at the employing establishment solely for personal reasons. Appellant was not scheduled to work on May 2, 2014. In fact she had been in nonpay status for a number of months. Appellant was at the facility to attend a DRAC meeting to assess whether an accommodation due to a nonwork-related medical condition could be made. Her activity at the time of the injury was not required as a condition of her employment and she was not involved in any preparatory activity reasonably incidental to employment as she was not scheduled to work at that time.²²

There is no evidence in the case that appellant's presence at the employing establishment on May 2, 2014 furthered her master's business or provided a substantial benefit to the employing establishment.²³ She has not established an injury in the performance of duty on May 2, 2014.

¹⁵ *Supra* note 3.

¹⁶ 32 ECAB 1859 (1981). *See also* *Jimmy E. Norred*, 36 ECAB 726 (1985);

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 57 ECAB 224 (2005).

²⁰ *Id.*

²¹ 58 ECAB 340 (2007).

²² *Id.*

²³ *See Howard M. Faverman*, 57 ECAB 151 (2005).

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.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on May 2, 2014.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board