United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 12-625**
	)	**Issued: October 26, 2012**
DEPARTMENT OF THE TREASURY, FINANCIAL MANAGEMENT, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 30, 2012 appellant filed a timely appeal of the August 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 that she sustained bilateral arm and right knee conditions on April 6, 2011 in the performance of duty.

FACTUAL HISTORY

On April 7, 2011 appellant, then a 47-year-old management and program analyst, filed a traumatic injury claim alleging that at 2:30 p.m. on April 6, 2011 she broke her right forearm and

[1] 5 U.S.C. § 8101 *et seq.*

scraped her right knee and left wrist when she stumbled and fell while walking to Choteau Trafficway as part of an event sponsored by the employing establishment. She caught herself with her hands and arm as she fell to her knees and rolled to her side. Appellant was taken to a hospital emergency room for treatment. Her tour of duty was from 6:30 a.m. to 4:00 p.m., Monday through Friday.

In medical reports dated April 6 through May 17, 2011, Dr. Steven B. Smith, an attending Board-certified orthopedic surgeon, advised that appellant had a radial head fracture nondisplaced consolidated radial neck fracture with a sprain of the right elbow. He recommended occupational therapy to treat the diagnosed conditions. On April 25, 2011 Dr. Smith released appellant to return to work with restrictions. The reports from occupational therapists addressed the treatment of appellant's sprain of the right elbow and right wrist symptoms from May 20 through June 16, 2011.

By letter dated June 17, 2011, OWCP requested that the employing establishment answer questions regarding the April 6, 2011 incident. It also sent a copy of the letter to appellant.

In an undated letter, appellant reiterated that the employing establishment sponsored the American Heart Association's National Start Walking Day. She was walking with two women and following Pearl Clark, a walk of lead, on a designated route towards Choteau Trafficway when she fell down. Appellant stated that attendance at the walk was not mandatory, but highly encouraged. No use of leave was required to attend the event. After the fall, appellant was assisted off the ground and completed the walk. She returned to her office building where she experienced pain.

In a June 29, 2011 letter, the employing establishment stated that it sponsored the April 6, 2011 event as part of National Start Walking Day. It provided substantial support, equipment and direction, organized or controlled the activity or event so that it would derive material benefit by providing warm up time, the walking route and walk leaders. The employing establishment contended that the event was not mandatory for employees. Appellant was not required to participate in the event or take leave to participate in it. At the time of injury, she was walking in the sponsored walking event as part of National Start Walking Day. Appellant was walking on the designated route westbound from the intersection of North Jackson Avenue onto North East 33rd Terrance in Kansas City, Missouri.

In an August 18, 2011 e-mail, the employing establishment stated that an accompanying time sheet for the period March 27 to April 9, 2011 revealed that on April 6, 2011 appellant was given one hour of administrative/excused absence to seek treatment at a local emergency room. The leave was not used to cover her walk.

In an August 18, 2011 decision, OWCP denied appellant's claim, finding that her April 6, 2011 injuries did not arise in the performance of duty. It found that the National Start Walking Day activity did not take place on the premises of the employing establishment during a lunch or recreational period as a regular incident of her employment. OWCP further found that the employing establishment did not expressly or impliedly require participation in the activity which was not part of its services. It did not derive any substantial benefit from appellant's participation in the walk.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

Section 8102(a) of FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of her duty.[4] This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, arising out of and in the course of employment.[5] Whereas arising out of the employment addresses the causal connection between the employment and the injury, arising in the course of employment pertains to work connection as to time, place and activity.[6] For the purposes of determining entitlement to compensation under FECA, arising in the course of employment, *i.e.*, performance of duty must be established before arising out of the employment, *i.e.*, causal relation, can be addressed.[7]

With regard to recreational or social activities, the Board has held that such activities arise in the course of employment when: (1) they occur on the premises during a lunch or recreational period as a regular incident of the employment; or (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the service of the employee, brings the activity within the orbit of employment; or (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.[8]

ANALYSIS

Appellant broke her right forearm and scraped her right knee and left arm on April 6, 2011 during a recreational walk in recognition of the American Heart Association's National

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] 5 U.S.C. § 8102(a).

[5] *See Bernard E. Blum*, 1 ECAB 1 (1947).

[6] *See Robert J. Eglinton*, 40 ECAB 195 (1988).

[7] *Kenneth B. Wright*, 44 ECAB 176, 181 (1992).

[8] *S.B.*, Docket No. 11-1637 (issued April 12, 2012); *R.P.*, Docket No. 10-1173 (issued January 19, 2011); *Ricky A. Paylor*, 57 ECAB 568 (2006); *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993); *William D. Zerillo*, 39 ECAB 525 (1988); *Kenneth B. Wright*, *supra* note 7. *See also* A. Larson, *The Law of Workers' Compensation* § 22.00 (2012).

Start Walking Day. She and her employer acknowledged that the walk took place on designated streets in the local community and not on the premises. The claimed injuries are not covered under the first criterion for recreational and social activities as the injuries did not occur on the employing establishment premises, but instead occurred on a public street, located off the employing establishment premises.

The second criterion is whether the employing establishment required appellant to participate in the walk or otherwise made the activity part of her services as an employee. Appellant noted that, although the employing establishment did not mandate participation in the walk, it encouraged participation. When the degree of the employing establishment involvement descends from compulsion to mere sponsorship or encouragement, the tests include whether it sponsored or financed the activity and whether participation was voluntary.[9] The record establishes that the employing establishment sponsored the walk and provided warm up time, and walk leaders. Appellant's participation in the walk was voluntary and not an express or implied requirement of her employment. She was not required to utilize leave to participate in the walk. The employing establishment granted appellant one hour of administrative/excused leave to seek medical treatment following injury. The Board has held that, if attendance at an event is voluntary and there is no direct, substantial benefit to the employing establishment, this outweighs its sponsorship of the event when determining whether an activity occurred in the course of employment.[10] The Board finds that the walk activity was not one which appellant was compelled to attend. Participation in the social activity was not part of her job or an activity for which she would be evaluated it was a voluntary activity.

Appellant also failed to satisfy the third criterion that the employing establishment derived substantial direct benefit from the April 6, 2011 walk beyond the intangible value of improvement in employee social life and morale. No evidence of record suggests that the social activity in this case was in any way related to the employing establishment's business.[11] Consequently, the Board finds that the evidence of record does not establish that the employing establishment derived substantial direct benefit from the activity beyond the intangible value of improvement in health and morale that is common to all kinds of recreation and social life.[12]

As appellant has not shown any nexus between her employment and the walk, the Board finds that she has not established that the April 6, 2011 injuries occurred in the performance of duty.

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.

[9] *Kenneth B. Wright*, *supra* note 7.

[10] *Barbara Roy*, 42 ECAB 960 (1991).

[11] *Anna M. Adams*, 51 ECAB 149 (1999).

[12] Larson, *supra* note 8 at § 22.05(3).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained bilateral arm and right knee conditions in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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