

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

B.P., Appellant

and

**AMERICORPS, NATIONAL CIVILIAN
COMMUNITY CORPS, Denver, CO, Employer**

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**Docket No. 13-788
Issued: August 23, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 19, 2013 appellant filed a timely appeal of a November 14, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. 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 was a federal employee within the meaning of FECA for purposes of receiving compensation for a left knee injury she allegedly sustained on May 3, 2012.

FACTUAL HISTORY

On May 4, 2012 appellant, then a 21-year-old corps member, filed a traumatic injury claim alleging that on May 3, 2012 she injured her left knee while playing team flag football at

¹ 5 U.S.C. § 8101 *et seq.*

Colorado Heights University. She indicated that she worked for AmeriCorps, National Civilian Community Corps, Southwest Region.

In an October 10, 2012 letter, OWCP advised appellant that as her claim now exceeded \$1,500.00, her claim was reopened for consideration. Appellant was advised as to requirements for establishing a claim under FECA. OWCP noted that no evidence had been received and advised her regarding the medical and factual evidence required to support her claim. Specifically, it noted that, while at the time of the injury appellant was employed by the Federal Judiciary in Denver, Colorado as an AmeriCorps Corp Member, the record was insufficient to establish that she was a federal civil employee and eligible for FECA benefits.

In response to OWCP's request, appellant submitted a May 17, 2012 magnetic resonance imaging (MRI) scan which revealed joint effusion and an acute isolated complete anterior cruciate ligament disruption with uncomplicated osteochondral contusions in the lateral femoral condyle and posterolateral proximal tibia.

Appellant subsequently submitted a signed questionnaire dated November 4, 2012 from OWCP. The questionnaire provided a definition of a federal civil employee and explained when participants in the American Conservation and Youth Corps are within the scope as federal employees and eligible for FECA benefits. It also contained three questions to which appellant did not respond.

By decision dated November 14, 2012, OWCP denied appellant's claim, finding that she was not eligible for compensation under FECA as she had not submitted any evidence establishing that she was an employee of the United States for the purpose of coverage under FECA.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,³ including that he or she is an employee within the meaning of FECA⁴ and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁶

Section 8102(a) of FECA provides that compensation can only be paid for the disability or death of an employee resulting from personal injury sustained while in the performance of

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143 (1989).

duty.⁷ For purposes of awarding compensation benefits under FECA, section 8101(1) defines employee, in relevant part, as a civil officer or employee in any branch of the government of the United States or as an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States.⁸ In determining whether a claimant is an employee for purposes of compensation, the Board will consider the particular facts and circumstances surrounding his or her employment.⁹

Section 2.802 of OWCP's Federal (FECA) Procedure Manual provides the following regarding when AmeriCorps Members are considered Federal Civil Employees for FECA benefits:

"The Commission on National and Community Service administers the American Conservation and Youth Corps, which makes grants to states or other applicants (nonprofit groups) to fund youth service corps. The participants are not generally considered federal employees, even though some may work directly for federal agencies. However, section 42 U.S.C. 12655n (b)(2) states in part that:

'a participant or crew leader serving in a program that receives assistance under this subtitle ... shall be considered an employee of the United States ... as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except--

'(A) the term "performance of duty," as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and....'

"The CE should inquire whether the crew leader or participant was serving with a federal agency, a nonprofit agency which received a grant directly from the Commission on National and Community Service, or with a state program. Only in the first two instances may the AmeriCorps member be considered a federal employee for purposes of coverage under FECA."¹⁰

ANALYSIS

OWCP denied appellant's claim on the grounds that the evidence of record was insufficient to establish that she was a federal civil employee eligible for FECA benefits. At the

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8101(1).

⁹ *Wendy S. Warner*, 38 ECAB 103 (1986).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Adjudication of Claims, *Civil Employee*, Chapter 2.802(30) (June 1995).

time of appellant's injury she was working for AmeriCorps. By letter dated October 10, 2012, OWCP informed appellant as to the definition of a federal civil employee and advised her that the evidence of record was insufficient to establish that she was a federal civil employee entitled to FECA benefits. OWCP provided a questionnaire for appellant to sign, date, complete and return. Appellant signed and dated the questionnaire, but did not respond to the questions posed.

The Board finds that appellant has not met her burden of proof to establish her status as an employee of the United States within the meaning of FECA at the time of her injury on May 3, 2012.

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 has failed to establish that she is a federal employee within the meaning of FECA for purposes of receiving compensation for her alleged May 3, 2012 injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2012 is affirmed.

Issued: August 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board