United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 14-577**
	)	**Issued: July 29, 2014**
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION, Atlanta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2014 appellant filed a timely appeal from an August 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 sustained an injury in an performance of duty on June 14, 2013.

FACTUAL HISTORY

On June 14, 2013 appellant, then a 46-year-old employee benefit plan assistant, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury above the eyebrow that day when he climbed on a table to attempt to repair the air conditioning (AC) unit located on the

[1] 5 U.S.C. § 8101 *et seq.*

ceiling. He stopped work, notified his supervisor and received emergency medical treatment on that same date. On the reverse side of the form, appellant's supervisor checked the box marked "No" when asked if appellant's injury was caused by his willful misconduct, intoxication or intent to injure self or another. The supervisor indicated that his knowledge of the facts surrounding the injury was in agreement with statements made by appellant. He further stated that appellant got up on a table to try and fix the overhead AC unit and fell, incurring a gash above the eyebrow. The supervisor told appellant not to do it.

In support of his claim, appellant submitted June 14, 2013 hospital records documenting treatment for his fall.

By letter dated July 24, 2013, OWCP informed appellant that the employing establishment did not controvert continuation of pay or challenge the merits of his claim. It noted that the only evidence received with his CA-1 form were hospital records dated June 14, 2013. OWCP informed appellant that the evidence was insufficient to support his claim and requested additional factual and medical evidence. Appellant was provided a questionnaire which asked him what he was doing prior to his attempt to repair the AC unit, where the AC unit was located, whether he was told to repair the AC unit, whether the building had maintenance, whether building maintenance was called and why he did not follow his supervisor's instructions to not climb on the table to repair the AC unit. He was asked to respond to the provided questions within 30 days.

In another letter dated July 24, 2013, OWCP requested the employing establishment provide additional information regarding the circumstances of the June 14, 2013 injury. It requested a detailed explanation from appellant's immediate supervisor as to how he gave appellant direction to not repair the AC unit, whether written notice was provided, if there were any witnesses present during the supervisor's direction, witness statements and any other information pertaining to the injury, the manner in which it was sustained and the particular activity in which appellant was engaged in at the time. The employing establishment was asked to respond to the requested information within 30 days.

No response was received from appellant or the employing establishment.

By decision dated August 29, 2013, OWCP denied appellant's claim finding that the evidence submitted was not sufficient to establish that he was injured in the performance of duty.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2]

[2] *See* 5 U.S.C. § 8102(a).

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, the locale and time of injury whereas, arising out of the employment, encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur 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 his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[3]

It is well established that employees who, within the time and space limits of their employment, engage in acts which minister to their personal comfort do not leave the course of employment.[4]

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty. An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim.[5]

ANALYSIS

Appellant filed a claim alleging that he sustained a traumatic injury on June 14, 2013 when he fell off a table at work while trying to fix an AC unit. By decision dated August 29, 2013, OWCP determined that the evidence was insufficient to establish that his injury arose in the performance of duty. The Board finds that appellant has not met his burden of proof to establish that his injury occurred in the performance of duty.

In developing the record to determine whether appellant was in the performance of duty at the time of the incident, he was provided a questionnaire, which asked him what he was doing prior to his attempt to repair the AC unit, where the AC unit was located, whether he was told to repair the AC unit, whether the building had maintenance, whether building maintenance was called and why he did not follow his supervisor's instructions to not climb on the table to repair the AC unit. He was asked to respond to the provided questions within 30 days. Appellant failed to respond.

The question of whether an employee is in the course of employment at the time of injury is based on the time, place and activity involved in the alleged incident.[6] The Board has previously found that an employee fails to establish a claim if time and place of injury are identified, but the description of the manner of activity causing injury is vague and incomplete.[7]

[3] *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

[4] A. Larson, *The Law of Workers' Compensation* § 21 (2007).

[5] *See T.B.*, Docket No. 13-1823 (issued March 20, 2014).

[6] *See B.B.*, Docket No. 12-165 (issued July 26, 2012).

[7] *See K.W.*, Docket No. 11-474 (issued September 19, 2011).

In the present claim, appellant failed to respond to OWCP's request for further information regarding his fall from the table top; information that was necessary for OWCP to determine whether he was in the course of his employment at the time of the alleged injury. As he failed to respond to a request from OWCP for further information to determine the elements of a claim, OWCP found that he failed to establish his claim for compensation.[8]

OWCP properly determined that there was insufficient factual evidence of record to establish that appellant's injury occurred in the performance of duty. Because appellant did not respond to OWCP's questions regarding this activity, he did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he was in the course of employment when he fell off the table while fixing an AC unit on June 14, 2013.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[8] *See M.F.*, Docket No. 10-1514 (issued March 11, 2011).