United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 14-636**
	)	**Issued: July 18, 2014**
U.S. POSTAL SERVICE, SCOTTSDALE HOPI STATION, Scottsdale, AZ, Employer	)	

Appearances:
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 20, 2014 appellant, through her representative, filed a timely appeal from the July 25, 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 met her burden of proof to establish an injury in the performance of duty on February 22, 2006.

FACTUAL HISTORY

On August 16, 2006 appellant, then a 53-year-old customer service supervisor, filed a traumatic injury claim alleging that she sustained injury on February 22, 2006 at 11:15 a.m. due

[1] 5 U.S.C. §§ 8101-8193.

to a motor vehicle accident that occurred in the performance of duty.[2] The portion of the claim form to be completed by the supervisor was signed by Mr. Pierce, the acting station manager. Appellant stopped work on February 22, 2006.

The record contains a February 22, 2006 accident report completed by a police officer from Scottsdale, AZ, advising that appellant's vehicle ran into the rear of a motor vehicle stopped for a red light shortly before 11:00 a.m. Appellant was traveling at a speed of 40 to 50 miles per hour and failed to apply the brakes.

In an August 16, 2006 letter, Jane Bermijo, an injury compensation specialist, controverted the claim contending that appellant's injury did not occur in the performance of duty. She indicated that appellant was not performing any assigned duties or engaged in any activity related to her employment at the time of the accident.

In an undated statement, Susan Service, a customer service supervisor, noted that appellant was not feeling well on February 22, 2006 and Mr. Pierce took her to his office to call her husband to pick her up and take her home for the day. Mr. Pierce instructed appellant to stay seated in his office until her husband arrived. After he left for a meeting, appellant left his office and walked around the workroom floor. Ms. Service had a conversation with appellant at about 10:45 a.m. in the restroom. Appellant then left the premises in her privately-owned motor vehicle, leaving her cell phone and purse behind and missing her husband by 10 to 15 minutes. Ms. Service stated that appellant's husband arrived at about 11:00 a.m. and she assisted him in looking for appellant in the building and parking lot but it was observed that her vehicle was gone. Appellant's husband left the premises to look for appellant and later learned she had been injured in a motor vehicle accident that occurred on route to their home.

In a September 29, 2006 decision, OWCP denied appellant's claim, finding that she did not sustain a work-related injury on February 22, 2006 as the motor vehicle accident did not occur in the performance of duty. It noted that she left her work premises due to a nonwork-related medical condition and was thereafter involved in the motor vehicle accident. The evidence failed to establish that appellant was engaged in any activity reasonably incidental to her employment at the time of the accident.

Appellant requested reconsideration of her claim. Counsel argued that appellant's injury occurred in the performance of duty because the employing establishment failed to render adequate assistance under the "human instincts" doctrine. He contended that the human instincts doctrine, recognized in a line of cases starting with *Mildred Drisdel*,[3] established a duty for the employing establishment to provide reasonable medical care or other assistance as an emergency may require so that an affected employee may have her life saved or avoid further bodily harm to herself or others. Counsel argued that it was unreasonable for Mr. Pierce not to call 911 and to

[2] Appellant alleged that she sustained multiple right ankle and foot fractures which necessitated surgery. She also had to undergo a splenectomy and partial liver removal. Appellant noted that various people had an opportunity to observe her on February 22, 2006 between 8:00 a.m. and 11:00 a.m. including Tony Pierce, Donna McClellan, Craig Anderson and others.

[3] 32 ECAB 82 (1980).

leave appellant alone after she suffered a seizure, particularly since the safety plan had been followed on prior occasions when appellant had a seizure. He addressed the facts in, *Marianne Eick (George E. Lick)*,[4] in which the Board evaluated the case under the human instincts doctrine and found that an injury had not occurred in the performance of duty. Counsel asserted that the facts of *Eick* were distinguishable from those of the present case. In *Eick*, the manager had taken adequate steps to determine that the employee was coherent and capable of driving and making decisions about medical care. In the present case, there was evidence that appellant was incoherent and the employing establishment failed to carry out a safety plan which had been devised to deal with her particular medical condition.

In a February 26, 2006 statement, Pam Baker, a supervisor, stated that on February 22, 2006 at about 7:45 a.m. she heard a weird noise and looked to see three carriers standing around appellant who was having a seizure. She told appellant to take some deep breaths and she kept saying, "I'm okay." Ms. Baker gave appellant a banana because she thought she might be "crashing" due to a low blood sugar level given that she was diabetic. She advised that the seizure lasted about 30 seconds and, after it stopped, Mr. Pierce escorted appellant to his office. Ms. Baker stated that she stood next to appellant "with my hand on the phone waiting to call 911." Appellant had a longer-lasting seizure about three or four weeks prior. She called appellant's son who noted that he would call his father and see if he could get appellant home. Appellant's son called Ms. Baker back after he was unable to contact his father and asked if someone could "just bring her home." He stated that no one would be home when appellant arrived but noted that, whenever she had a seizure, she slept for many hours. Ms. Baker told appellant's son that she would try to get appellant home and then he stated, "Okay, I have to go to school." She saw appellant walk by her desk and go to the bathroom at about 10:30 a.m. she assumed appellant was going to lie down on a couch until her husband picked her up. Someone told Ms. Baker that appellant had spoken to her husband and that he was meeting her on the dock to take her home. Ms. Baker saw appellant's husband walking to the back office at about 11:10 a.m. and she left work about 10 minutes later. She called appellant's home at about 1:30 p.m. and her son stated that appellant was not yet home. Ms. Baker learned that appellant might have left to drive herself home and that her husband arrived at the worksite after she left. She was subsequently advised that appellant had been in an accident.

In a July 15, 2006 statement, Donna McClellan, a coworker, advised that she was present on February 22, 2006 when appellant had a seizure at work. Several coworkers who were assisting appellant asked management to call 911 but they did not do so. A management official helped appellant to an office in order to wait for a family member. Ms. McClellan stated:

> "[Appellant] came back out of the office by herself with no one with her to keep an eye on her. I seen her wondering around and went to management to say that she was wondering around on her own and should not be left alone, let alone walking around because she was stumbling along. [Appellant] had stopped at a few carrier cases and wandered to the dock doors. I repeated again to two supervisors [appellant] was wondering around and should not be left on her own. I was ignored while they were making plans to go to lunch to make their

[4] 40 ECAB 1056 (1989).

> schedules for the carriers. I walked away as [appellant] was still wondering around and went out the dock doors. Later that day as we were coming in from the street, management was asking the carriers if we've seen [appellant]. [Appellant] had left and no one had seen her. We later found out she was in an accident and was seriously hurt...."

In an undated statement, Ms. Service noted that on February 22, 2006 she arrived at work at about 10:25 a.m. As she walked toward her office, she noticed that Mr. Pierce was not in his office. After checking some paperwork in her office, Ms. Service walked onto the workroom floor and saw appellant there. As the two walked together to the restroom, a coworker stated "you're still here" to appellant and she responded "yes, I'm waiting to go home." Ms. Service asked appellant if she was leaving early and she responded "yes, tough day." In the restroom, she asked appellant how her fitness-for-duty examination went the prior day and appellant responded that the examination never occurred because she got lost on the way. Ms. Service last saw appellant at about 10:40 a.m. when they had a brief exchange about the filing of a report. She stated, "In my conversations with [appellant] she seemed coherent; I would not have guessed that she had a seizure that morning. Ms. Service was walking and talking fine."

Appellant submitted several reports from April 2006 in which Dr. Guillermo M. Estrada, an attending Board-certified neurologist, advised that she had a history of diabetes and epilepsy. Dr. Estrada stated that appellant had a seizure at work on February 22, 2006 and might have had another seizure while she was driving home on that date. On July 5, 2006 Dr. Carolyn Barlow, an attending osteopath and Board-certified family practitioner, stated that appellant had a history of seizure disorder that was not problematic until she had a seizure while driving and had a motor vehicle accident in which she sustained a right ankle fracture and surgery, partial liver resection and splenectomy. The emergency room reports from February 22, 2006 noted that appellant was unable to provide any history secondary to her confusion. Appellant was able to answer some questions but appeared to be in a post-seizure state.

In a September 25, 2007 letter, counsel argued that the fact appellant left the worksite without her purse or identification showed that she was in a confused state at the time.

On December 11, 2007 OWCP requested that the employing establishment respond to a series of questions regarding appellant's medical situation on February 22, 2006, the nature of any emergency medical plans in place and the handling of prior instances of medical distress. Linda Hartshorn, a health manager for the employing establishment, responded to OWCP's questions. On February 22, 2006 an employee reported that there was something wrong with appellant and her managers responded immediately because they were aware that she had a medical condition that predisposed her to seizures. Ms. Hartshorn stated that the employing establishment had instructed employees to call 911 in case of a medical emergency and that this procedure would have been followed if the employees present had any reason to believe that appellant was having a medical emergency. Appellant told her coworkers that she was okay and both her husband and son were contacted but gave no indication that she needed to be transported to a hospital. Management had no reason to believe that appellant was unable to care for herself and it exercised reasoned judgment in asking her to stay in Mr. Pierce's office until her husband arrived. Ms. Hartshorn stated that, when appellant had seizures in the past, Donna

Fay, the station manager, took appellant to her office, made her comfortable and made arrangements with a family member to pick her up and drive her home.

In a February 14, 2008 decision, OWCP denied appellant's claim. It found that management acted reasonably on February 22, 2006 given that appellant stated that she was fine and her behavior was observed to be normal.

In statements to the record, appellant noted that she might have told Ms. Baker that she was okay immediately after her seizure, but such a brief, generic statement did not mean she was not in medical distress or not in need of immediate medical care. After about 10:30 a.m., she was able to make contact with her husband. Appellant only told her husband, "I'm sick come and get me." Mr. Pierce did not stay in the room while she made this call. He came back into the office and asked if appellant's husband was coming. Mr. Pierce left after she provided an affirmative response. Appellant stated that Mr. Pierce never spoke to her husband or any other family member concerning her medical condition. Due to her confused state, she forgot that she had called her husband and she took her car keys to drive away. On at least one prior occasion when appellant had a seizure at work, the employing establishment had called 911. She did not understand why 911 was not called or why she was left alone by Mr. Pierce.

In an undated statement, appellant's husband advised that she contacted him at about 10:30 a.m. on February 22, 2006. She asked him to pick her up at work because she had a seizure. He asserted that, when appellant had experienced a previous seizure at work, management officials called 911 and he visited her at the hospital.

In a March 11, 2009 decision, OWCP denied appellant's claim. It found that her managers had acted reasonably in handling her medical situation on February 22, 2002. There was no evidence that appellant's motor vehicle accident had a relationship to her medical condition on that date.

In a September 23, 2010 decision,[5] the Board remanded the case to OWCP for further development. The Board noted that the question of why appellant apparently was left alone at about 10:30 a.m. on February 22, 2006 had not been adequately developed. Moreover, the question of her level of coherence needed to be further addressed.

On remand, OWCP obtained additional witness statements. It contacted the employing establishment to obtain a telephone number for Mr. Pierce and was informed that he had retired. Jeff Day, the postmaster at appellant's workplace on February 22, 2006, provided a statement noting that the employing establishment did not have Mr. Pierce's contact information. Mr. Day indicated that coworkers stated that on February 22, 2006 appellant did not fall down or convulse or hit her head or have obvious physical injuries. Based on the information he had, appellant had "stared off into space" and her hand twitched. Mr. Day stated that the seizure was transient and that appellant was conversant shortly thereafter and requested that the manager not call 911. He noted that the manager had the 911 number entered into her telephone but did not send the call because of appellant's coworker's request not to call emergency services. Mr. Day indicated that appellant was taken to Mr. Pierce's office and that the first person contacted was her son, who

[5] Docket No. 09-2275 (issued September 23, 2010).

was not able to pick up his mother because he was going to school. The son questioned why the employing establishment could not bring her home and noted that she would probably be more comfortable on soft furniture. The employing establishment contacted appellant's husband and he agreed to come and pick up his wife. Mr. Day noted that appellant acknowledged Mr. Pierce's instruction to wait for her husband. Mr. Pierce had a meeting elsewhere and left appellant in his office, sitting down with the lights off. Mr. Day discussed the statements of Ms. Service who indicated that she saw appellant acting normally at the bathroom at approximately 10:25 a.m. He stated that his managers were not medically trained and that he believed that they acted appropriately by contacting the family and also having been told by appellant, who was conversant and apparently capable of meaningful interactions, that she would wait for her husband. Mr. Day noted that appellant's son and husband indicated not to call emergency services. He stated that the employing establishment had known for about three weeks that appellant had seizures and that she had failed to attend a fitness-for-duty examination. Mr. Day also noted that there was no nurse that worked at the station at the time of appellant's seizure and there was no written emergency plan that appellant had with the employing establishment.

An OWCP senior claims examiner contacted Mr. Pierce, who indicated that Ms. Baker brought appellant into his office on the morning of February 22, 2006. Mr. Pierce stated that appellant was conversant and talking. He told appellant that he would call 911 but she indicated that she did not want 911 called. Appellant's son was contacted first and was not able to pick her up. Her husband was subsequently contacted and he agreed to pick her up but noted that it would take at least an hour to get to the station. Mr. Pierce related that the immediate care for appellant was to provide a comfortable place to sit, some water and a damp compress. He stated that appellant was able to understand him and take direction and that he was with her for approximately 20 minutes. Mr. Pierce left his office at about 8:00 a.m. to 8:10 a.m. as he had a meeting of station managers to attend at the Main Post Office. It was his understanding that appellant would stay there until her husband arrived. Mr. Pierce indicated that there were people at the station who could help appellant if needed, including Ms. Baker. He stated that there was no particular "plan" that he knew of to call 911 when these events occurred.

OWCP additionally contacted the Hopi Station and spoke with Mr. Anderson, who stated that he saw appellant on February 22, 2006. Mr. Anderson saw appellant in Mr. Pierce's office but did not speak to her. He stated that she looked ill and was sitting in a hunched over position looking at the floor.

In a memorandum dated October 13, 2010, Mr. Pierce noted that appellant had come to his office on February 22, 2006 and he told her not to leave until she felt better. He left and after some time, returned to his office and she was gone. Mr. Pierce stated that she was not on the clock and he could not prevent her from ignoring his directions.[6]

In a December 8, 2010 decision, OWCP found that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on February 22, 2006.

[6] On December 7, 2010 Dr. Ellen Pichey, a medical adviser, reviewed the record and noted that appellant had refused 911 on February 22, 2006, appeared lucid and was able to use her telephone. She stated that it was reasonable to have appellant picked up by her husband.

It found from the preponderance of the witnesses' statements that she was acting normally after she suffered a brief seizure and that it was reasonable to direct her to rest in Mr. Pierce's office while waiting for her husband to pick her up.

By letter dated January 5, 2011, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative. At the hearing, appellant described in detail the incidents which occurred in her workplace on February 22, 2006 and her contact with members of management. Her husband supplied additional testimony.

In a May 16, 2011 decision, the hearing representative affirmed the December 8, 2010 decision. He found that the employing establishment exercised reasonable care with regard to appellant's seizure on February 22, 2006.

In a May 18, 2012 decision,[7] the Board affirmed OWCP's May 16, 2011 decision finding that appellant did not meet her burden of proof to establish an injury in the performance of duty on February 22, 2006. The Board found that the evidence of record established that the employing establishment took reasonable efforts after she became ill at about 7:45 a.m. on the morning of February 22, 2006. Appellant was temporarily incapacitated when she suffered an apparent seizure and no credible evidence was of record to establish that, after a brief apparent seizure of about 30 seconds, she was rendered helpless to provide for her own care.

In a May 1, 2013 letter, appellant, through counsel, requested reconsideration. Counsel alleged that new factual evidence had been obtained which demonstrated more clearly that the employing establishment failed in its responsibility to properly respond to the situation on February 22, 2006. He argued that the employing establishment knew or should have known not only that appellant had a seizure on the date in question (as well as in 2004 and 2005), but that she should not have been allowed to drive after the seizure. The employing establishment failed to follow the same procedures it had followed with appellant when she had a seizure at work in 2004. Counsel claimed that on February 22, 2006 policies were in effect that the employing establishment failed to implement. He contended that a new statement from appellant established that her employing establishment knew that she was susceptible to seizures and that she should not drive.[8] Counsel asserted that Handbook EL-806 (Health and Medical Service) of the employing establishment dictated that in any emergency the injured employee's physician should be called and, when the physician is not available, an ambulance should be called. He also claimed that the Postal Service Manual (ELM 17.15) provided that in a medical emergency an employee should be evaluated by a physician or nurse to determine the severity of the injury or illness. Counsel argued that documents obtained from several health care provider websites

[7] Docket No. 11-1655 (issued May 18, 2012).

[8] In an undated statement, appellant provided additional details about her interactions with Mr. Pierce on February 22, 2006. She asserted that Mr. Pierce should have known that she was impaired due to the fact that she could not remember her husband's telephone number. Appellant mentioned Mr. Pierce's instruction to not leave the premises until her husband arrived. She indicated that she did not tell Ms. Service about her seizure on February 22, 2006 because the effects of the seizure affected her memory. Appellant stated that the employing establishment had been aware that she was subject to seizures (due to epilepsy and diabetes) since she suffered a seizure in March 2004. After she suffered the March 2004 seizure and another seizure in 2005 she did not drive for three months, a restriction which she believed was dictated by Arizona law.

showed that any seizure should be interpreted as an emergency medical condition requiring immediate medical care. He claimed that the materials gathered from various websites, including an article from the Epilepsy Foundation about Arizona's treatment of drivers who suffer seizures, established that the employing establishment should not have allowed appellant to drive on February 22, 2006.[9] Counsel also argued that OWCP's Program Memorandum No. 186 (dated December 23, 1974) provides that, when there is a deleterious effect from an act of omission (such as failure to inform an employee of positive findings on diagnostic testing), the case should be referred to an OWCP medical adviser for evaluation.

In a July 25, 2013 decision, OWCP found that appellant did not meet her burden of proof to establish an injury in the performance of duty on February 22, 2006. It evaluated the evidence and argument submitted by appellant on reconsideration and found that it did not alter its prior determination that the employing establishment exercised reasonable care in handling the February 22, 2006 incident. Therefore, appellant did not establish a February 22, 2006 work injury under FECA.

LEGAL PRECEDENT

Under the human instincts doctrine, an employer has the duty to make reasonable efforts to procure medical aid or other means of relief to an employee who becomes ill or injured on the job, and who as a result is helpless to provide for her own care. A failure, on the part of the employer, to satisfy this duty may be sufficient to establish a causal connection between an employee's condition and the employment if it is shown that such failure contributed to the condition for which compensation is claimed.[10] In *Marianne Eick (George E. Eick)*,[11] the Board found that the employer acting reasonably when it did not provide medical care to the employee's husband and allowed him to drive away from the premises because, despite the fact that he did not appear well, he was found to be in a coherent state and he had refused medical attention.[12] In *Jerry L. Sweeden*,[13] the Board held that the employer acted reasonably in response to the employee's seizures in that coworkers transported him to a hospital in a timely manner.

ANALYSIS

On August 16, 2006 appellant filed a traumatic injury claim alleging that she sustained injury on February 22, 2006 at 11:15 a.m. due to a motor vehicle accident that occurred in the performance of duty. She claimed that the motor vehicle accident, along with its resultant injuries, occurred in the performance of duty because the employing establishment failed to

[9] Counsel submitted excerpts from internet sources concerning the definition of an emergency medical situation and laws governing driving after suffering a seizure.

[10] *Joseph J. Rotelli*, 40 ECAB 987 (1989).

[11] 40 ECAB 1056 (1989).

[12] The claimant's husband died of a heart attack about a day after his supervisor last spoke to him and offered to provide him with transportation to a medical facility.

[13] 41 ECAB 721 (1990).

provide her with an appropriate standard of care which would have prevented her from suffering such an accident. Appellant contended that her February 22, 2006 injury should be covered under FECA through application of the human instincts doctrine.[14]

Counsel contends that new factual evidence submitted since the Board's May 18, 2012 decision establishes that the employing establishment failed in its responsibility to properly respond to the situation on February 22, 2006. He argued that the employing establishment knew or should have known not only that appellant had a seizure on the date in question but also that she should not have been allowed to drive after the seizure.[15] The Board notes that there is no dispute that the employing establishment knew that appellant was susceptible to seizures. The issue is whether her managers acted reasonably in handling her medical situation on February 22, 2006. Based on the evidence of record, the Board finds that the employing establishment did in fact act reasonably.

Counsel asserted that Handbook EL-806 (Health and Medical Service) of the employing establishment dictated that in any emergency the injured employee's physician should be called and, if the physician is not available, an ambulance should be called. The submitted portion of the manual, however, does not appear to support his contention that the employing establishment must contact an attending physician or arrange for an ambulance in every case.[16] He also claimed that the Postal Service Manual (ELM 17.15) provided that in a medical emergency an employee should be evaluated by a physician or nurse to determine the severity of the injury or illness. Again, the portion of Postal Service Manual submitted by appellant contains recommended actions in medical emergency situations and to provide such assistance as required. Counsel argued that the submitted documents obtained from several health care provider websites establish that any seizure should be interpreted as an emergency medical condition requiring immediate medical care and that materials gathered from various websites, including an article from the Epilepsy Foundation about Arizona's treatment of drivers who suffer seizures, establish that the employing establishment should not have allowed appellant to drive on February 22, 2006. The Board notes, however, that these extracts contain information that is general in nature and are of limited applicability to appellant's situation on February 22, 2006.[17]

The Board notes that witness statements reveal that immediately after the February 22, 2006 seizure appellant stated that she was "okay," she was provided with a bottle of water, wet cloth and a banana. Mr. Pierce, the station manager, placed her in a private office with

[14] *See supra* notes 11 through 14.

[15] Counsel indicated that a new statement of appellant showed that the employing establishment knew that appellant was susceptible to seizures and that she should not drive.

[16] The administrative procedures noted providing nursing care for minor injuries and, in more critical cases, only emergency first aid given with the employee referred to their private physician or nearest hospital.

[17] Counsel also argued that OWCP's Program Memorandum No. 186 (dated December 23, 1974) dictated that when there is a deleterious effect from an act of omission (such as failure to inform an employee of positive findings on diagnostic testing), the case should be referred to an OWCP medical adviser for evaluation. He did not adequately explain how this document pertained to appellant's particular situation.

instructions to stay there pending the arrival of her husband to pick her up and take her home. He stated that appellant was lucid when he spoke to her and that she understand and answered in the affirmative when he asked her to rest in his office until her husband arrived.[18] Mr. Pierce had to leave appellant to attend a meeting, and there is no indication when he left the office that she would not continue to rest comfortably in his office. Following her seizure, appellant repeatedly assured personnel that she was okay and, despite the fact that management was prepared to call 911, she advised that such an action was not necessary. Both, appellant's son and her husband, were contacted and neither individual believed it was necessary to contact emergency services. Witness statements reveal that several people spoke to appellant after her seizure and observed that she appeared lucid and engaged in normal conversations. Ms. Service, a customer service supervisor, indicated that she saw appellant at the bathroom and had a normal conversation with her at approximately 10:25 a.m. She had another conversation with appellant in the workroom at about 10:40 a.m., around the time appellant left the workplace to drive home.

The record on appeal establishes that appellant was stable and waited for approximately two and a half hours in Mr. Pierce's office for her husband's arrival. It is not contested that appellant was not well, but the evidence reflects that she was not in immediate need of emergency services. Appellant's son advised management that, after having similar events, appellant would be left alone in her room where she would rest. It does not appear that she was unable to provide care for herself in that she was not unconscious or otherwise uncommunicative and she did not request emergency services.[19]

For these reasons, appellant did not meet her burden of proof to establish an injury in the performance of duty on February 22, 2006. She 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 meet her burden of proof to establish an injury in the performance of duty on February 22, 2006.

[18] In her newly submitted statement, appellant indicated that Mr. Pierce should have known that she was incapacitated by her seizure because she was unable to remember her husband's telephone number. Mr. Pierce's statement shows, however, that his overall conversation with appellant revealed that she was lucid after suffering the brief seizure on February 22, 2006.

[19] Moreover, there is no evidence that appellant was engaging in any activity incidental to her work at the time of her motor vehicle accident on February 22, 2006.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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