

FACTUAL HISTORY

On February 9, 2015 appellant, then a 59-year-old substation operator associate, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2015 he injured his lower back in a motor vehicle accident. He related that, while stopped at a yield sign in Union Gap, Washington, a vehicle struck his right rear bumper. The employing establishment indicated on the claim form that appellant was injured in the performance of duty and that a third party caused the injury.

By letter dated February 20, 2015, OWCP requested that appellant submit additional factual and medical evidence. It specifically asked that he address whether his injury occurred on the premises of the employing establishment.³

Appellant submitted hospital reports describing his treatment on February 5, 2015 for lumbosacral strain. He further submitted form reports, including an undated and unsigned authorization for examination and/or treatment (Form CA-16). On the Form CA-16 a nurse practitioner diagnosed lumbosacral strain, checked “yes” that the injury resulted from the described employment activity of a motor vehicle accident, and found that he could work limited duty.

On March 27, 2015 OWCP telephoned appellant’s supervisor to request additional information. It telephoned the supervisor again on March 30, 2015 and left a message for him to return the call.

By decision dated April 3, 2015, OWCP denied appellant’s claim as he had not established that he was in the performance of duty at the time of the February 5, 2015 motor vehicle accident. It found that there was no evidence showing that he was on the premises of the employing establishment at the time of the accident or performing the duties of his employment. OWCP indicated that it had telephoned appellant’s supervisor, but had received no response.

On April 15, 2015 appellant requested reconsideration and submitted additional medical evidence. In a decision dated June 18, 2015, OWCP denied his request for reconsideration after finding that the evidence submitted was immaterial and thus insufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128(a).

On appeal appellant asserts that the employing establishment authorized his trip to pick up supplies from a vendor and that he was using a government vehicle at the time of the accident.

LEGAL PRECEDENT -- ISSUE 1

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ The phrase

³ The last page of the letter asked the employing establishment to submit treatment notes if appellant was treated at an employing establishment medical facility for the claimed injury.

⁴ 5 U.S.C. § 8102(a).

sustained while in the performance of duty 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 In the course of employment relates to the elements of time, place, and work activity.⁶ To arise in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto.⁷

As a general rule, off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment.⁸ Such injuries are merely the ordinary, nonemployment hazards of the journey itself which are dependent upon the particular facts relative to each claim. These exceptions pertain to the following instances: (1) where the employment requires the employee to travel on highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of a fireman; and (4) where the employee uses the highway to do something incidental to his employment with the knowledge and approval of the employing establishment.⁹

OWCP's procedures provide, "The employing [establishment] is required to complete the reports and statements needed and then submit the evidence to OWCP. In several types of claims (*e.g.*, stress claims, claims with POD [performance of duty] issues such as premises, temporary duty travel, or recreational injuries), a statement from the employing [establishment] is imperative to properly develop and adjudicate the claim."¹⁰

ANALYSIS -- ISSUE 1

Appellant alleged that he injured his lower back in a February 5, 2015 motor vehicle accident. The employing establishment did not controvert the claim. OWCP requested that appellant submit supporting factual evidence, including a detailed description of the circumstances surrounding his February 5, 2015 motor vehicle accident and whether he was on the premises of the employing establishment. It did not request factual information in writing

⁵ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation laws. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *See D.L.*, 58 ECAB 667 (2007).

⁷ *See R.A.*, 59 ECAB 581 (2008).

⁸ *Paul R. Gabriel*, 50 ECAB 156 (1998).

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

from the employing establishment.¹¹ Instead, OWCP left telephone messages for appellant's supervisor on March 27 and 30, 2015.

The Board finds that the case is not in posture for decision as to whether appellant was in the performance of duty at the time of the alleged February 5, 2015 work incident. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.¹² The Board finds that OWCP did not sufficiently develop the evidence regarding whether appellant was in the performance of duty at the time of the alleged February 5, 2015 motor vehicle accident. As noted, its procedures provide that a statement from the employing establishment is essential in developing a performance of duty claim.¹³ On remand OWCP should obtain a statement from the employing establishment addressing whether appellant was in the performance of duty at the time of the February 5, 2015 motor vehicle accident.

CONCLUSION

The Board finds that the case is not in posture for decision.¹⁴

¹¹ The Board notes that whether appellant was on the employing establishment's premises is irrelevant to the proper inquiry as to whether he was in the performance of duty at the time of the motor vehicle accident. It also only asked for medical treatment notes. *See supra* note 3.

¹² *See L.L.*, Docket No. 12-194 (issued June 5, 2012); *N.S.*, 59 ECAB 422 (2008).

¹³ *See supra* note 10.

¹⁴ In view of the Board's finding regarding the merit issue of whether appellant sustained an injury on February 5, 2015 in the performance of duty, the issue of whether OWCP properly denied his request to reopen his case for further merit review under section 8128 is moot.

ORDER

IT IS HEREBY ORDERED THAT the June 18 and April 3, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 7, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board