United States Department of Labor
Employees' Compensation Appeals Board

F.L., Appellant	)	
and	)	**Docket No. 15-1172**
	)	**Issued: October 2, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2015 appellant, through counsel, filed a timely appeal from a March 26, 2015 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 on February 21, 2014 in the performance of duty.

FACTUAL HISTORY

On February 21, 2014 appellant, then a 55-year-old clerk, filed a traumatic injury claim alleging that on that date at 5:55 a.m. she injured her right wrist and right knee when she tripped

[1] 5 U.S.C. § 8101 *et seq.*

and fell walking on the sidewalk in front of her building. She did not stop work. The employing establishment indicated on the claim form that appellant was not injured in the performance of duty as she was "on her way to work." It provided her work hours as 6:00 a.m. until 2:30 p.m.

On April 28, 2014 OWCP advised appellant that it had originally paid a limited amount of medical expenses as her injury appeared minor and was not controverted. It was now formally adjudicating her claim. OWCP requested that appellant submit additional factual and medical information, including a description of how her injury occurred and reasoned medical evidence addressing the causal relationship between a diagnosed condition and the identified work incident.

In a response received May 23, 2014, appellant related, "I was walking on the sidewalk going toward the [employing establishment] when I trip[ped] and fell. I was trying to keep myself from falling, but I fell on my right side."

By decision dated June 4, 2014, OWCP denied appellant's claim finding that the medical evidence was insufficient to show that she sustained a diagnosed condition as a result of the accepted February 21, 2014 employment incident.

On June 27, 2014 appellant requested reconsideration. She asserted that she had submitted a medical report from her physician addressing the cause of her disc herniation. Appellant submitted additional medical evidence.[2]

By decision dated September 29, 2014, OWCP denied modification of its June 4, 2014 decision. It found that appellant had not submitted a reasoned medical opinion attributing a diagnosed condition to the accepted work incident.

On December 30, 2014 appellant, through counsel, requested reconsideration and submitted supporting medical evidence.

In a decision dated March 26, 2015, OWCP again denied modification of June 4, 2014 decision after finding that appellant had not submitted sufficient medical evidence to show that she sustained an injury on February 21, 2014.

LEGAL PRECEDENT

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.[3] In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her

[2] On June 11, 2014 Dr. Patrick A. Hogan, a Board-certified neurologist, stated, "I suspect a causal relationship to [appellant's] February 21, 2014 accident and her disc herniation." On June 17, 2014 appellant submitted an emergency room report dated March 4, 2014. Dr. Michael D. Feldmeier, Board-certified in emergency medicine, obtained a history of appellant falling on her right side on February 21, 2014. He diagnosed muscle pain.

[3] 5 U.S.C. § 8102(a).

employment or engaged in doing something incidental thereto.[4] For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours or at lunch time, is compensable.[5] However, that same employee with fixed hours and a fixed workplace would generally not be covered when an injury occurs off the employing establishment premises while traveling to or from work.[6] The reason for the distinction is that the latter injury is often merely a consequence of the ordinary, nonemployment hazards of the journey itself which are shared by all travelers.[7]

The employing establishment premises may include all the property owned by the employer.[8] Although an employer does not have ownership and control of the place where an injury occurred, the locale may nevertheless be considered part of the premises.[9] The proximity exception to the premises rule states that under certain circumstances the industrial premises are constructively extended to those hazardous conditions which are proximate to the premises and may, therefore, be considered as hazards of the employing establishment.[10] Underlying the proximity exception is the principle that course of employment should extend to an injury that occurred at a point where the employee was within the range of dangers associated with the employment.[11] The most common reason for extension is that the off-premises location where the injury occurred lies on the only route or at least on the normal route that employees must traverse to reach their employer, and as such, the particular hazards of that route become the hazards of employment.[12] Relevant factors to be considered include whether the employer contracted for exclusive use of the area and whether the area is maintained to see who may gain access to the premises.[13]

ANALYSIS

Appellant alleged that she injured her right knee and right wrist when she tripped and fell at 5:55 a.m. on February 21, 2014 while walking on the sidewalk in front of her building. Her scheduled work hours were from 6:00 a.m. until 2:30 p.m. The employing establishment challenged the claim as appellant was "on her way to work" at the time of the incident.

[4] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[5] *Id*.; *Denise A. Curry*, 51 ECAB 158, 160 (1999).

[6] *Idalaine L. Hollins-Williamson*, 55 ECAB 655, 658 (2004).

[7] *Id*.

[8] *See Denise A. Curry, supra* note 5.

[9] *Id*.

[10] *D.M.*, Docket No. 13-535 (issued June 6, 2013).

[11] *F.S.*, Docket No. 09-1573 (issued April 6, 2010).

[12] *Id*.

[13] *Id*.

Appellant had fixed hours of employment and she experienced the incident on her way to work. She would thus only be in the performance of duty if her fall on February 21, 2014 occurred on the actual or constructive premises of the employing establishment.[14] OWCP, however, did not develop this aspect of the case.

A claimant seeking compensation under FECA has the burden to establish the essential elements of his or her claim by the weight of the evidence, including that he or she sustained an injury in the performance of duty.[15] Nonetheless, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares 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.[16] The Board will remand the case for OWCP to develop the factual evidence and determine whether appellant was on the premises of the employing establishment at the time of her fall on February 21, 2014. Following such development as deemed necessary, it shall issue an appropriate decision on appellant's claim.

CONCLUSION

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

[14] *See L.Y.*, Docket No. 13-761 (issued July 18, 2013); *Rosie P. Colmer*, Docket No. 03-116 (issued May 2, 2003).

[15] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[16] *See Shirley A. Temple*, 48 ECAB 404 (1997); *Mary A. Wright*, 48 ECAB 240 (1996).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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