



## **FACTUAL HISTORY**

On December 4, 2014 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury when his vehicle was hit from behind at 5:00 p.m. on November 26, 2014. His regular work hours were 7:30 a.m. to 4:00 p.m. with rotating days off work. The employing establishment checked a box indicating that appellant was injured in the performance of duty. It noted that the injury had been caused by a third party. The employing establishment also challenged appellant's claim, stating that causal relationship and the factual aspect of the claim had not been established.

In emergency room progress notes dated November 21 and 30, 2014, Eden M. Canite, a registered nurse, and Dr. James R. Freeman, a Board-certified internist with a primary specialty in nephrology, respectively, indicated that appellant was treated for acute chronic back pain. Discharge instructions were provided which addressed appellant's restrictions and medications.

In an undated disability certificate, Dr. Ghanshyam C. Barot, a family practitioner, noted that appellant was treated on December 2, 2014 and that he could not return to work until cleared by an orthopedist.

By letter dated January 2, 2014, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional factual and medical evidence. It documented that the submitted evidence was insufficient to support that he was injured while performing any work duty. OWCP also noted that appellant did not provide a physician's opinion explaining how his injury resulted in a diagnosed condition. It also requested that the employing establishment respond to his allegations and submit evidence regarding his work duties and any medical evidence, if he had been treated at its medical facility.

In a January 27, 2015 statement, appellant related that, on the date of injury, he was in a government vehicle, but he was not on his usual assigned route. Rather, he was instructed by the officer-in-charge to perform collections from the boxes located at Virginia State University (VSU).

In a December 11, 2014 medical report, Dr. Prakasam Kalluri, a Board-certified orthopedic surgeon, provided a history of injury that appellant was involved in a motor vehicle accident on November 26, 2014, reviewed his medical records, and noted findings on physical examination. He assessed appellant as having a lumbar sprain. Dr. Kalluri noted that, although appellant had preexisting low back pain and had undergone a recent back procedure, he did not have any pain with facet loading or extension indicating that the procedure caused a significant increase in pain. He provided an impression that appellant's pain was aggravated by his motor vehicle crash. Dr. Kalluri advised appellant to stay out of work for three weeks and to undergo physical therapy.

In reports dated January 6, 13, and 16, 2015, appellant's physical therapists addressed the treatment of appellant's lumbopelvic and lower extremity conditions.

On April 16, 2015 an assistant special agent-in-charge in the employing establishment's Office of Inspector General submitted an investigative report regarding appellant's

November 26, 2014 motor vehicle accident with surveillance photographs of his activities from December 16, 2014 to February 17, 2015 and exhibits which included medical records related to the treatment of his preexisting and current back conditions. The report indicated that he had stopped work on or about November 28, 2014.

In an April 16, 2015 decision, OWCP denied appellant's claim. It found that the factual and medical evidence was insufficient to establish that he sustained an injury on November 26, 2014 while in the performance of duty. OWCP stated that appellant was not on his assigned route on the date-of-injury and he did not submit any investigative reports documenting the claimed incident. In addition, appellant did not submit any medical evidence that established a diagnosed medical condition in connection with the work injury or event.

In an appeal request form dated May 18, 2015 and postmarked May 19, 2015, appellant requested a telephone hearing with an OWCP hearing representative.

By letter dated May 13, 2015, Carlos A. Thomas, an employing establishment officer-in-charge, stated that appellant was involved in an accident on November 26, 2014. The paperwork presented to management indicated that appellant was off of his assigned route at the time. Mr. Thomas stated that appellant was on a collection operation as directed by management and he was traveling toward Ettrick to collect mail from three blue collection boxes. He further stated that, while sitting stationary at the intersection of North Sycamore Street and East Bank Street, appellant was struck from behind. Mr. Thomas related that appellant was still working on the clock at the time of the accident.

Appellant submitted a police report of the November 26, 2014 incident. He also submitted progress notes and an addendum note dated November 24, 2014 and April 6, 2015 from Dr. Meenakshi Bindal, Board-certified in physical medicine and rehabilitation, and pain medicine, Javier Soares-Velez,<sup>2</sup> and Dr. Allison J. Hickman, a Board-certified physiatrist, which addressed his chronic low back pain, service-connected disabilities, and medical treatment.

By decision dated June 11, 2015, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP considered his request and determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA provides for the payment of compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.<sup>3</sup> The phrase sustained while in the performance of duty has been interpreted by the Board 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, locale, and

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<sup>2</sup> The Board notes that the professional qualifications of Javier Soares-Velez are not contained in the case record.

<sup>3</sup> 5 U.S.C. § 8102(a). *See also P.S.*, Docket No. 08-2216 (issued September 25, 2009).

time of injury whereas, arising out of the employment encompasses not only the work setting but also the requirement that an employment factor caused the injury.<sup>4</sup>

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his 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 his employment or engaged in doing something incidental thereto.<sup>5</sup>

OWCP procedures include letter carriers in the first of four general classes of off-premises workers.<sup>6</sup> In determining whether this class of employees has sustained an injury in the performance of duty, the factual evidence must be examined to ascertain whether, at the time of injury, the employee is within the period of the employment, at a place where the employee reasonably may be and while the employee is fulfilling employment duties or engaged in activities reasonably incidental thereto.<sup>7</sup>

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.

Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed a traumatic injury claim alleging that he sustained a back injury on November 26, 2014 when his government vehicle was hit from behind as he travelled to VSU to collect from boxes at the school. OWCP determined that his injury did not arise in the performance of duty. The Board, however, finds that the injury did occur in the performance of duty.

The Board notes that the November 26, 2014 injury occurred at a time and in a place where appellant could reasonably be engaged in his employer's business. Appellant was reasonably fulfilling the duties of his employment or activities incidental thereto. Mr. Thomas,

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<sup>4</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *C.O.*, Docket No. 09-217 (issued October 21, 2009).

<sup>5</sup> *T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a) (August 1992).

<sup>7</sup> *Thomas E. Keplinger*, 46 ECAB 699 (1995).

<sup>8</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

an employing establishment officer-in-charge, stated that while appellant was not on his assigned route when his vehicle was struck from behind, he was on the clock as he was ordered to travel to the location where his injury occurred. He related that management had directed appellant to collect mail from three collection boxes. There was no deviation or departure from his work assignment that occurred when he was involved in the motor vehicle accident.

The Board therefore finds that appellant's November 26, 2014 injury occurred in the performance of duty when his vehicle was hit from behind. Accordingly, the case will be remanded to OWCP to consider the medical evidence in order to determine whether appellant sustained a diagnosed medical condition causally related to the established November 26, 2014 employment incident.

### **CONCLUSION**

The Board finds appellant has established that he sustained an injury in the performance of duty and the case is remanded for evaluation of the medical evidence.<sup>9</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 11 and April 16, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 6, 2016  
Washington, DC

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

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

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

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<sup>9</sup> In light of the Board's disposition on the first issue, it is not necessary to address the second issue.