

**United States Department of Labor
Employees' Compensation Appeals Board**

A.C., Appellant

and

**DEPARTMENT OF COMMERCE, BUREAU
OF THE CENSUS, Dallas, TX, Employer**

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**Docket No. 16-0081
Issued: August 15, 2016**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On October 19, 2015 appellant filed a timely appeal from a July 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP), claim number xxxxxx404.¹ OWCP found that she was not in the performance of duty at the time of her May 15, 2015 alleged incident. The appeal was docketed as No. 16-0081.

The Board has duly considered the matter and finds that the case is not in posture for decision. On May 20, 2015 appellant filed a traumatic injury claim (Form CA-1) alleging that on May 15, 2015 she sustained injuries as the result of tripping and falling forward over a gouge in the pavement. She noted that she was leaving a training event to go to lunch and was walking to her car. By letter dated May 29, 2015, OWCP advised her as to the medical and factual evidence required to establish her claim and requested that she complete an attached questionnaire. The questionnaire stated that as appellant was "injured off the premises of her employing establishment" she should respond to three questions to determine if she was in the performance of duty when injured. The Board notes that the questions inquire into the ownership, control, and management of the parking lot; whether she was required to park in this lot by the employing establishment; and whether she was in travel status at the time of her injury. Appellant submitted a response to the questionnaire on June 9, 2015. OWCP also submitted a

¹ The Board notes that appellant was employed as a census enumerator.

May 29, 2015 development letter to the employing establishment inquiring as to the premises and location of the injury and duties of appellant's employment, but did not inquire as to the employing establishment premises or appellant's fixed place of employment. The employing establishment submitted a response to OWCP's letter on June 8, 2015. By decision dated July 2, 2015, OWCP denied appellant's claim finding that she had failed to establish fact of injury. Specifically, it found that at the time of injury appellant was not in the performance of duty as she had left her designated work area for lunch, further noting that the injury occurred on a property that was not controlled, managed, owned, or within the influence of the employing establishment.

The Board notes that the record lacks development of the employment duties of a census enumerator, whether a census enumerator has a fixed place of employment, or whether appellant was on a special mission or errand from a fixed place of employment when injured.² The record does not contain the policy of the employing establishment with regard to lunch breaks for census enumerators in their regular work duties. There is no indication in the record regarding the degree of control the employing establishment retained over appellant during her lunch break as to distance and activity, and if in fact lunch was available at the training site.³ Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is OWCP 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 government source.⁴

Accordingly, the Board will remand the case to OWCP for further development of the claim of a census enumerator to determine whether appellant was in the performance of duty at the time of the alleged incident. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.⁵

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5 (January 2013).

³ See *K.W.*, Docket No. 09-0726 (issued November 9, 2009); *A.W.*, Docket No. 08-0306 (issued July 1, 2008); *J.E.*, Docket No. 07-0814 (issued October 2, 2007).

⁴ *Richard Kendall*, 43 ECAB 790 (1992).

⁵ The Board notes that appellant submitted additional evidence on appeal after OWCP rendered its July 2, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

IT IS HEREBY ORDERED THAT the July 2, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: August 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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