United States Department of Labor
Employees' Compensation Appeals Board

E.V., Appellant	)	
and	)	**Docket No. 16-1356**
	)	**Issued: December 6, 2016**
DEPARTMENT OF THE NAVY, NAVAL MEDICAL CENTER, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2016 appellant filed a timely appeal of a May 20, 2016 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on December 24, 2015.

FACTUAL HISTORY

On December 28, 2015 appellant, then a 59-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2015 at 6:10 a.m. she tripped and fell sustaining abrasions to both knees and fracture of the humerus of her right arm. She listed the

[1] 5 U.S.C. § 8101 *et seq.*

location of the injury as "crosswalk from parking lot." On the reverse of the Form CA-1, appellant's supervisor indicated that her regular work hours were from 7:00 a.m. until 3:30 p.m.

Dr. Matthew Perl, a physician Board-certified in emergency medicine, examined appellant on December 24, 2015 and diagnosed proximal humerus fracture and knee abrasions. He indicated that she fell at work.

Dr. Maneesh Bawa, a Board-certified orthopedic surgeon, examined appellant on December 29, 2015. He noted that she had tripped and fallen on December 24, 2015 and sustained a nondisplaced right proximal humerus fracture.

In a letter dated April 13, 2016, OWCP requested that appellant provide additional factual evidence in support of her traumatic injury claim. It noted that she had established a right proximal humerus fracture as a result of her trip and fall on December 24, 2015. However, OWCP noted that it was not clear that appellant's trip and fall occurred while she was in the performance of duty as this incident took place at 6:10 a.m. and her duty shift did not begin until 7:00 a.m. It asked that she explain why she reported to work 50 minutes early and whether she was in a work status at the time of her injury. OWCP also asked whether the parking lot where appellant was injured was owned, controlled, or managed by the employing establishment. It allowed 30 days for a response.

The employing establishment responded on April 25, 2016 and noted that appellant arrived early on December 24, 2015 to secure a parking spot on base that was close to her office. It noted that she usually arrived early for this reason, that there were limited parking spaces on base and that many employees arrived early to park on employing establishment property. The employing establishment confirmed that appellant fell on employing establishment owned, controlled, and managed parking facilities. It further noted that security personnel patrolled the parking lot to ensure that only employees were parked there.

In an April 25, 2016 statement, appellant explained that she had arrived early that day to get parking in the employing establishment employee parking lot. She asserted that the lot was totally filled by the time her shift officially began. Appellant claimed that she had planned to start work early that morning as it was Christmas Eve and there would only be a half day of work. She contended that she was injured on the employing establishment premises.

By decision dated May 20, 2016, OWCP denied appellant's traumatic injury claim finding that she was not in the performance of duty at the time her injury occurred at 6:10 a.m. as her shift did not begin until 7:00 a.m. It noted that she explained that she had arrived early to obtain a parking space, a matter of personal convenience, rather than to perform any work-related function.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach

merely upon the existence of any employee/employer relation.[2] FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."[4] "In the course of employment" deals with the work setting, the locale, and time of injury.[5] In addressing this issue, the Board has stated:

> "In the compensation field, 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 her master's business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto."[6]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, that the employment caused the injury, in order for an injury to be found to be arising out of the employment. The facts of the case must show some substantial employer benefits or that an employment requirement gave rise to the injury.[7]

ANALYSIS

The Board finds that appellant was not in the performance of duty at the time of her slip and fall on December 24, 2015.

The factors considered in determining whether an employee arriving at work is in the performance of duty are whether the injury occurred on the employing establishment's premises, the time interval before the work shift, and the activity at the time of the injury.[8] Appellant has established that she was injured on the employing establishment's premises. The facts establish that the incident occurred in a parking lot owned, controlled, maintained, and patrolled by the employing establishment.

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[2] *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948); *Christine Lawrence*, 36 ECAB 422, 423-24 (1985).

[3] *See* Federal Employees' Compensation Act, 5 U.S.C. § 8101 *et seq.*

[4] *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

[5] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

[6] *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

[7] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[8] *J.O.*, Docket No. 12-0266 (issued June 11, 2012); *George E. Franks*, 52 ECAB 474 (2001).

Appellant indicated that she slipped and fell at 6:10 a.m., 50 minutes before her work shift began at 7:00 a.m. In *T.F.*,[9] the employee sustained an injury when she tripped on a loose floor tile 25 minutes before her work shift began at 6:00 a.m. She was on the premises of the employing establishment in the vicinity of her work cubicle but was engaged in personal activities. The Board affirmed the denial of compensability under FECA, noting that finding a good parking place, drinking coffee, having breakfast, and putting her lunch away were personal activities and not reasonably incidental to the work of the employing establishment. The Board found that her presence at the premises some 25 minutes prior to the commencement of her work shift did not constitute a reasonable interval under the circumstances.

Appellant has identified no employment-related activity involved in her arrival at 6:10 a.m. Both she and the employing establishment indicated that she arrived early to secure a parking spot in the lot nearest her duty station. The Board finds that appellant's activity of securing a preferred parking spot was not reasonably incidental to her employment, but an unrelated personal activity. The employing establishment did not obtain a substantial benefit from appellant's choice to arrive early and park in the lot closest to her duty station.[10] The Board finds that although appellant was injured on the employing establishment premises, the timing of her injury, 50 minutes prior to the start of her work shift, and the lack of employing establishment benefit from her early arrival establish that her injury did not occur in the performance of duty. Although the claimant alleged that she had arrived early to begin work that day, no evidence was provided to substantiate her contention that any work was performed.

Appellant 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's injury on December 24, 2015 did not occur in the performance of duty.

[9] Docket No. 09-154 (issued July 16, 2009). *See also George E. Franks, id.* and *Myra L. Acosta*, Docket No. 05-0821 (issued July 13, 2005) (when the Board found that early arrival was not in the performance of duty as there was no employment-related activity involved in those early arrivals. Rather, the employees came to work early to eat breakfast.

[10] *But see I.F.*, Docket No. 12-0192 (issued September 26, 2013) (finding that taking work home resulted in a substantial benefit to the employing establishment).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board