United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 16-1419**
	)	**Issued: December 6, 2016**
DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES MEDICAL CENTER, Los Angeles, 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 27, 2016 appellant filed a timely appeal from a May 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 CFR §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established an injury in the performance of duty on September 25, 2015.

FACTUAL HISTORY

On November 16, 2015 appellant, then a 60-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that he sprained his right ankle on September 25, 2015 when he jumped down stairs and landed wrong. The injury reportedly occurred in Downtown Los

[1] 5 USC § 8101 *et seq*.

Angeles at 6:20 p.m. Appellant's regular tour of duty was midnight until 8:30 a.m. The employing establishment represented that he was injured on his way to work when he slipped and fell at the Blue Line Station. The employing establishment stated that appellant was not in the performance of duty when the incident occurred. Appellant stopped work on September 25, 2015.

In a November 20, 2015 development letter, OWCP advised appellant of the deficiencies in his claim and requested that he provide factual and medical evidence within 30 days. Also, in a November 20, 2015 letter, OWCP requested that the employing establishment clarify appellant's work schedule and provide comments from a knowledgeable supervisor relative to the claim.

OWCP subsequently received a November 11, 2015 incident report from the employing establishment. The report indicated that appellant injured his right lower leg/ankle on September 25, 2015 at 6:20 p.m. (18:20) while on his way to work. Appellant had been scheduled to work overtime. He was reportedly transferring between two trains and rushing to catch the Red Line train when coming down the stairs he misjudged the steps and slipped down and hurt his right ankle. The employing establishment records also noted a history of preexisting, service-connected right ankle injury. Following the September 25, 2015 incident, appellant's healthcare provider placed him off duty until November 2, 2015, at which time he was to resume full-duty work.

By decision dated December 28, 2015, OWCP denied the claim as the factual and medical components of fact of injury had not been met. It noted that appellant had not responded to the November 20, 2015 development letter.

Appellant timely requested reconsideration. He submitted a February 11, 2016 attending physician's report (Form CA-20) in which Dr. Li Wen, an internist, diagnosed an ankle sprain. Dr. Wen indicated that the diagnosed condition occurred on September 25, 2015 when appellant was on his way to work in the train station and opined that it had not occurred in the performance of duty.

By decision dated May 26, 2016, OWCP denied the claim, finding that appellant was not in the performance of duty when injured on September 25, 2015.

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."[2] In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place where he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[3] 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

[2] 5 U.S.C. § 8102(a).

[3] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 423-24 (2006).

compensable.[4] 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.[5] 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.[6] Certain exceptions to this rule have developed where the hazards of the travel are dependent on particular circumstances: (1) where the employment requires the employee to travel on the highways; (2) where the employing establishment contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls, as in the case of firefighters; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employing establishment.[7]

ANALYSIS

The record reflects that appellant's normal work hours were 12:00 midnight to 8:30 a.m. On the date in question, September 25, 2015, appellant was on his way to work for authorized overtime. According to various reports, appellant was injured at 6:20 p.m. in a Downtown Los Angeles train station.

While appellant had fixed weekly hours, it is not controverted that he was on his way to work on September 25, 2015. In *Robert A. Hoban*, the employee fractured his left wrist when he fell on an icy street while walking to work.[8] The Board found that nothing in the facts of the case brought the claim within any of the recognized exceptions to the general going and coming rule and; therefore, the employee was not in the performance of duty.[9]

There is also no evidence of record to support that appellant's injury falls within any of the exceptions to the general going and coming rule. As appellant was not on the actual or constructive premises of the employing establishment, or engaged in activities incidental to his employment, he cannot be considered within the protection of FECA. Appellant's employment did not require that he travel on the trains and he was not engaged in a special errand or mission incident to his employment at the time of the injury. The accident occurred at a public train

[4] *Id.*; *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

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

[6] *Id*.

[7] *R.C.*, 59 ECAB 427, 430 (2008).

[8] *Robert A. Hoban*, 6 ECAB 773 (1954) citing *Cardillo v. Liberty Mutual Ins. Co*., 330 U.S. 469, 479.

[9] *Id.*; *see, e.g., Virginia Bernice Mitchell*, 32 ECAB 1437 (1981) (a noncompensable injury sustained when the employee was assaulted while on her way to work); *Anne R. Rebeck*, 32 ECAB 315 (1980) (a noncompensable injury when the employee tripped over a cobblestone sidewalk adjacent to the employing establishment premises); *Gloria C. Adalian*, 26 ECAB 131 (1974) (a noncompensable fall on a sidewalk immediately adjacent to the federal building in which the employee worked); *Harriett Williams (Harrison O. Williams*), 20 ECAB 327 (1969) (the death of the employee due to an automobile accident while driving to work found noncompensable); *Esther S. Freeman*, 12 ECAB 39 (1961) (a noncompensable injury on a public thoroughfare while on the way to work); *Rowena R. Davis*, 8 ECAB 226 (1955) (a noncompensable injury sustained while stepping down from a street car while in route to work); *Isidor S. Handelsman*, 7 ECAB 99 (1954) (a noncompensable injury sustained while crossing a street while on the way to work).

station, which was not a part of or under the control of the employing establishment.[10] Appellant did not establish any special degree of inconvenience or urgency to show that his trip on September 25, 2015, in and of itself, was a substantial part of any service for which he was employed.[11] As appellant has not established that he sustained an injury in the performance of duty, the medical evidence need not be addressed.[12]

The Board therefore finds that, based on these considerations, appellant was not in the performance of duty at the time of the September 25, 2015 accident.[13]

CONCLUSION

The Board finds that appellant failed to establish an injury in the performance of duty on September 25, 2015.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 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

[10] *See Edith F. Bolet*, 6 ECAB 245 (1953).

[11] *Jon Louis Van Alstine*, 56 ECAB 136 (2004).

[12] *See Barbara Dabney*, Docket No. 97-903 (issued December 2, 1998).

[13] *See J.N.*, Docket No. 14-1764 (issued December 2, 2015).