

FACTUAL HISTORY

On April 22, 2015 appellant, then a 58-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that at 12:15 p.m. on March 27, 2015 she sustained a “compressed fracture in back” in Bolton’s department store when she fell during her lunch break. The employing establishment checked a box “yes” that she was in the performance of duty.

In an April 2, 2015 statement, Jodi McDonald, the chief of the regulatory branch, explained that on March 27, 2015 at approximately 1300 hours, appellant informed the employing establishment that she was at her desk in a lot of pain because she had hurt her back. She noted that appellant, during her lunch hour, was at a clothing store across the street, and slipped and fell in the dressing room while trying on clothes. Ms. McDonald advised that appellant inquired as to whether an accident report needed to be filled out, but was told that she was engaged in a personal activity during her personal time when she fell and was injured. Ms. McDonald reiterated that appellant fell in a clothing store off the employing establishment premises during an unpaid lunch break.

In a May 5, 2015 statement, Debra Smith, a manager at the employing establishment, controverted the claim and advised that she made an error when she filled out the traumatic injury claim form. She noted that she checked a box “yes” that appellant was in the performance of duty. However, Ms. Smith explained that she should have checked “no.” She advised that appellant was on her lunch break, off the employing establishment premises, in a commercial clothing store at the time of her injury. Ms. Smith further noted that appellant slipped in the dressing room and was not in the performance of her duties. She requested that the claim be denied.

By letter dated July 2, 2015, OWCP noted that appellant’s claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and appellant’s claim was administratively handled to allow a limited amount of medical payments. However, the merits of the claim were not formally considered. Appellant’s claim was now being reopened as the employer wanted the claim to be adjudicated. OWCP informed her of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. It asked her to complete a questionnaire explaining where she was and what she was doing at the time her claimed injury occurred. Appellant did not respond.

By decision dated August 7, 2015, OWCP denied appellant’s claim and found that the evidence did not demonstrate that a specific event, incident, or exposure occurred at the time, place, and in the manner alleged. It noted that, without a response to the factual questions in its July 2, 2015 letter, it was unable to determine if the claimed injury occurred in the performance of duty.

LEGAL PRECEDENT

Under FECA, and its implementing regulations, an employee bears the burden of proving all essential elements of a claim, including that he or she experienced a specific event, incident or exposure at the time, place, and in the manner alleged, and that the alleged injury occurred in the performance of duty.³ Board precedent requires that an injury sustained in the performance of

³ See *Gregory J. Reser*, 57 ECAB 277 (2005).

duty must have arisen: (1) at a time when the employee may reasonably be stated to be engaged in her masters 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 his employment or engaged in doing something incidental thereto.⁴

The Board has included within the performance of duty a reasonable time before and after work to allow for coming and going, as well as personal ministrations, such as lunch or bathroom breaks, engaged in for the benefit of the employing establishment.⁵ If the injury does not take place during those periods or on employing establishment premises, the Board will place special emphasis on whether the employee was engaged in an activity related to fulfilling the duties of his employment.⁶

ANALYSIS

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on March 27, 2015.

Appellant alleged that on March 27, 2015 she sustained a back injury when she fell during her lunch break at a department store. She did not indicate how the injury occurred or where the department store was located in relationship to the employing establishment. The employing establishment controverted the claim and provided an April 2, 2015 statement from Ms. McDonald who explained that on March 27, 2015 appellant informed the employing establishment that she hurt her back when she slipped and fell in the dressing room of a clothing store while trying on clothes during her lunch hour. Additionally, in a May 5, 2015 statement, Ms. Smith again explained that the claimed injury occurred on appellant's lunch break and she was not on the employing establishment premises. By letter dated July 2, 2015, OWCP asked appellant to complete a questionnaire explaining where she was and what she was doing at the time of her claimed injury. No response was received.

As noted, an injury sustained in the performance of duty must have arisen: (1) at a time when the employee may reasonably be stated to be engaged in her masters 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. As appellant did not provide further details requested by OWCP she has failed to meet her burden of proof to establish an employment injury.⁷ She failed to provide an adequate description of the March 27, 2015 incident.

⁴ *Mary Keszler*, 38 ECAB 735 (1987).

⁵ *George E. Franks*, 52 ECAB 474 (2001).

⁶ *See Venicee Howell*, 48 ECAB 414 (1997); *Narbik A. Karamian*, 40 ECAB 617 (1989).

⁷ *See T.V.*, Docket No. 15-1336 (issued October 8, 2015).

As appellant has not established that the claimed incident occurred as alleged in the performance of duty, it is unnecessary to address whether causal relationship is established by medical evidence.⁸

On appeal, appellant argues that her claim should not be denied because there was no cafeteria or store to purchase food on the premises and she was injured on her lunch break. She also argued that she had no history of injury prior to the incident. As explained, the weight of the evidence submitted to OWCP does not establish that the claimed incident occurred in the performance of duty.

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 did not meet her burden of proof to establish a traumatic injury in the performance of duty on March 27, 2015.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 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

⁸ *S.P.*, 59 ECAB 184 (2007) (where a claimant did not establish an employment incident alleged to have caused his or her injury, it was not necessary to consider any medical evidence).