

² The Board notes that, following the September 24, 2015 decision, OWCP received additional evidence. Appellant also submitted new evidence with his appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On August 3, 2015 appellant, then a 43-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day at 4:45 p.m. he experienced shortness of breath, dizziness, cramping, blurred vision, kidney dysfunction, and dehydration while walking on Sugg Street and provided a specific address. On the back of the form the employing establishment noted that appellant's tour of duty was from 7:15 a.m. to 3:45 p.m. It checked a box indicating that the injury did occur in the performance of duty and that appellant stopped work at 5:00 p.m. on the date of injury. The employing establishment controverted appellant's claim as he had failed to submit supporting medical evidence.

In support of his claim, appellant submitted an illegible return to work/school notification form.

By letter dated August 14, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim and was afforded 30 days to provide the requested evidence. OWCP informed appellant there was no diagnosis for the alleged injury, nor was there sufficient evidence supporting that he was in the performance of duty at the time of the incident. It provided a questionnaire for appellant to answer. OWCP did not receive the completed questionnaire from appellant.

Subsequent to OWCP's letter it received an August 3, 2015 Baptist Health-Madisonville document concerning appellant's treatment on August 3, 2015 for a syncopal episode. The report was electronically signed by Dr. Christopher Bunch, a Board-certified surgeon. Appellant had related that he felt faint and collapsed while under exertion delivering mail. He noted that, prior to fainting, he felt nauseous and light-headed. Treatment, test results, and examination findings were provided. Clinical impressions were syncope, dehydration, and moderate acute renal failure.

By decision dated September 24, 2015, OWCP denied appellant's claim. It found the evidence of record insufficient to establish that appellant was in the performance of duty at the time of the incident due to the fact that his work schedule ended at 3:45 p.m. and the incident occurred at 4:45 p.m. OWCP noted that no evidence had been submitted to show that appellant was in the performance of duty at the time of the August 3, 2015 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the

³ 5 U.S.C. § 8101 *et seq.*

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.⁶ The phrase in the course of employment is recognized as relating to the work situation and more particularly, relating to elements of time, place, and circumstance. In addressing this issue, the Board has stated the following:

“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 his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.”⁷

The Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is engaged in preparatory or incidental acts and what constitutes a reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee's activity.⁸ This alone is not sufficient to establish entitlement to compensation. The employee must establish the concurrent requirement of an injury arising out of the employment. Arising out of employment requires that a factor of employment caused the injury. It is incumbent upon the employee to establish that the claimed injury arose out of his or her employment; that is, the accident must be shown to have resulted from some risk incidental to the employment. In other words, some contributing or causal employment factor must be established.⁹

ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained an injury on August 3, 2015 while walking on Sugg Street. OWCP denied the claim as it found that appellant was not

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

⁷ *Mary Keszler*, 38 ECAB 735, 739 (1987).

⁸ See *Venicee Howell*, 48 ECAB 414 (1997); *Narbik A. Karamian*, 40 ECAB 617 (1989). In the cases concerning what constitutes a reasonable interval before or after work, the Board has been influenced by the activities engaged in by the employees before or after work. In *Howell*, the Board found coverage when the employee was injured five minutes after work while performing the incidental task of submitting a job bid. However, in *Arthur A. Reid*, 44 ECAB 979 (1993), the Board denied coverage when the employee was injured 45 minutes after work while engaging in a private conversation.

⁹ See *Venicee Howell*, *supra* note 8.

in the performance of duty at the time of the injury as his tour of duty ended at 3:45 p.m. and the injury occurred at 4:45 p.m. The employing establishment reported to OWCP that on the date of injury he worked until 5:00 p.m.

It is appellant's burden of proof to submit sufficient evidence for OWCP to make a determination as to whether he was in the course of federal employment at the time of the incident.¹⁰ This includes establishing the essential elements of his claim, which includes fact of injury. Other than noting on his CA-1 form that he sustained injuries while walking on Sugg Street on August 3, 2015, appellant has failed to provide a detailed account of the alleged injury sufficient to establish that the incident occurred in the performance of duty.¹¹ More specifically, he did not identify what, if any, employment activity he was engaged in on his CA-1 form. Appellant merely stated that he was in the process of walking on Sugg Street. In its August 14, 2015 development letter, OWCP informed appellant that the evidence of record was insufficient to support his claim and requested that he submit additional evidence. While he submitted an August 3, 2015 hospital report noting that he fainted while delivering mail, he did not provide any factual evidence showing that he was in the performance of duty at the time of the incident. Appellant did not respond to OWCP's questionnaire or otherwise submit evidence showing he was in the performance of duty, with a detailed account of what he was doing at the time of the August 3, 2015 incident. The Board finds that his statement that he was walking at the time and the lack of factual evidence showing his activities at the time of the incident does not support his allegation that the August 3, 2015 event occurred in the performance of duty.

The Board therefore finds that appellant has not met his burden of proof to establish that he experienced the August 3, 2015 employment incident in the performance of duty. He has submitted no factual evidence establishing that he was performing work duties at the time of the incident. Because he has not met his burden of proof to establish fact of injury, it is unnecessary to make a finding as to whether appellant was performing work duties at 4:45 p.m. or to discuss the medical evidence.¹²

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 has not met his burden of proof to establish an injury in the performance of duty on August 3, 2015.

¹⁰ T.S., Docket No. 09-2184 (issued June 9, 2010); *Bonnie A. Contreras*, *supra* note 4.

¹¹ See *M.B.*, Docket No. 11-1785 (issued February 15, 2012); *Dennis M. Mascarenas* 49 ECAB 215, 218 (1997)

¹² *Tracey P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 24, 2015 is affirmed, as modified.

Issued: March 8, 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