

parcel from a mailbox on his route and followed them to retrieve the parcel. He stopped work on May 22, 2014. The employing establishment contended that the alleged injury did not occur in the performance of duty because appellant chased down customers in order to stop the theft of a parcel, which was not within the scope of his duties as a letter carrier.²

In a handwritten statement, appellant explained that when he picked up the CA-1 form he was told by his supervisor, Brian Cronin, that he was wasting his time submitting a claim because it would be denied and he would be written up for what occurred.

In duty status reports dated May 22 and June 5, 2014, a physician with an ineligible signature noted that appellant worked as a letter carrier and that on May 19, 2014 he hopped out of his truck to retrieve a parcel that was stolen out of a mailbox on his route. He described clinical findings of inflammation and pain and diagnosed quadriceps tendinosis. The physician advised that appellant could return to work on June 16, 2014 with restrictions.

By letter dated June 9, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence to demonstrate that he experienced the alleged incident in the performance of duty and that he sustained a diagnosed condition as a result of the employment incident. It also requested that the employing establishment submit medical evidence if appellant was treated at its medical facility.

In a June 11, 2014 Continuation of Pay (COP) note, a nurse reported that appellant sustained a right knee sprain and had not returned to work since the injury. Appellant related that the injury was improving and he anticipated returning to work on June 16, 2014.

In a June 18, 2014 narrative statement, appellant reported that on May 19, 2014 he was finishing up his route when he observed two kids in the street acting strange when he drove by. He continued to watch them in his rear view mirror when he saw one kid take a package out of a mailbox. Appellant reported that the first kid met up with a second kid and they both turned down Tavernier Drive. He then turned the vehicle around and followed them around the corner onto Tavernier Drive. When appellant pulled up to the kids, he jumped out of his vehicle and landed on his right knee. He felt pain in his right knee when he took four or five steps. Appellant stated that the area where he stepped out of his vehicle dipped down approximately five or six inches further than the sidewalk because of water drainage, causing injury to his knees. He reported the incident to his supervisor when he returned to the office about 20 minutes later, but did not inform his supervisor about his injured knee because it was not hurting much at the time. Around 2 a.m. appellant woke up in severe pain and was unable to touch or bend his knee at all. He informed his supervisor what happened and that he was not able to go to work to complete the paperwork in order to receive medical treatment. Appellant reported that when his supervisor brought him the form he was informed not to bother filing a claim because it would be denied and to use his own insurance. He stated that an emergency room (ER) doctor informed

² The record reveals that appellant previously filed four traumatic injury claims: for a November 24, 2001 injury (File No. xxxxxx103), a July 14, 2005 injury (File No. xxxxxx128), a March 4, 2011 injury (File No. xxxxxx329), and a September 18, 2012 injury (File No. xxxxxx928). He also filed a previous occupational disease claim (File No. xxxxx392).

him to stay in bed and to keep his leg elevated with heat and ice for seven days or until he could see an orthopedic doctor. Appellant noted that he had a meniscus repair about 10 years ago.

Appellant submitted a May 20, 2014 prescription form which advised appellant to rest and elevate his leg for one week and a map of the area where the incident took place.

In a decision dated July 14, 2014, OWCP denied appellant's claim based on performance of duty. It determined that the evidence failed to demonstrate that the alleged May 19, 2014 injury occurred during the course of his employment or within the scope of his compensable work factors. Specifically, OWCP found that chasing down a customer to stop the theft of a parcel was not within the scope of his duties.

On October 9, 2014 OWCP received appellant's request for reconsideration. Appellant submitted a signed authorization form designating his union steward to represent him.

Appellant also submitted a June 12, 2014 duty status report from a physician assistant with an eligible signature. He indicated that on May 19, 2014 appellant sustained a quadriceps tendinitis when he stepped out of his vehicle onto his right leg after noticing a boy had stolen a parcel from a mailbox. The physician assistant advised appellant not to return to work.

By decision dated October 21, 2014, OWCP denied appellant's reconsideration request finding that the evidence was insufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that the evidence submitted was irrelevant or immaterial to the issue of whether his alleged injury occurred in the performance of duty.

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.³ The phrase sustained while in the performance of duty in FECA is regarded as the equivalent of the commonly found requisite in workers compensation law of arising out of and in the course of employment.⁴

To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁵ In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.⁶

³ 5 U.S.C. § 8102(a).

⁴ See *Valerie C. Boward*, 50 ECAB 126 (1998).

⁵ See *R.A.*, 59 ECAB 581 (2008); *Mary Keszler*, 38 ECAB 735 (1987).

⁶ See *Mark Love*, 52 ECAB 490 (2001).

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.⁷ The Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was aimed at reaching some specific personal objective.⁸

ANALYSIS

Appellant alleged that on May 19, 2014 he sprained his right knee when he slipped and fell when leaving his truck after he pursued three kids that he witnessed steal a parcel from a mail box on his route. OWCP determined that his injury did not arise in the performance of duty. The Board finds that this case is not in posture for decision regarding whether appellant was in the performance of duty on May 19, 2014 when he sustained an alleged injury.

In its July 14, 2014 denial decision, OWCP determined that there was insufficient evidence to establish that his alleged injury arose during the course of employment and within the scope of compensable work factors. It noted that the employing establishment challenged appellant's claim because chasing down a customer to stop the theft of a parcel was not within the scope of his duties. Thus, the Board must determine whether appellant's actions at the time of his alleged injury were reasonably incidental to his work assignment or represented such a departure from the work assignment that he was engaged in personal activities unrelated to his employment.⁹

In *P.B.*,¹⁰ a letter carrier who sustained injuries to his eye, skin, left shoulder, neck and back when he slipped on gasoline and fell down after jumping out of his work truck in order to chase an assailant who had thrown gasoline on him was found to not be in the performance of duty. The Board determined that appellant stopped work and deviated from his mail route in order to attend to a personal matter of chasing and attempting to catch his assailant. The Board noted that the employee's activity was that of a specific personal objective as the employee admitted that he had personal animosity towards the assailant when he was previously threatened with physical harm by the assailant. In that case, the Board specifically pointed out that "the employing establishment's 2005 standard training program guide provided safety instructions to its employees which included not endangering oneself in the event of a threat assault or angering or harassing an assailant." Thus, the Board concluded that while appellant was in the performance of duty when the assailant threw gasoline on him while he was delivering mail on his route, he deviated from the course of employment when he got into his truck to chase after

⁷ *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

⁸ *Rebecca LeMaster*, 50 ECAB 254 (1999).

⁹ *Supra* note 7.

¹⁰ Docket No. 13-1092 (issued June 19, 2014).

the assailant, in direct violation of the employing establishment's guidelines, and later slipped and fell when leaving his truck.

Unlike the facts of *P.B.*, however, the record in this case does not contain any information regarding the employing establishment's procedures or protocols regarding what mail carriers are instructed to do when they witness mail being stolen on their mail route. The record also does not contain evidence of any personal animosity appellant may have had towards the juveniles involved in this case. Accordingly, the Board is unable to determine whether appellant's actions in this case, when he slipped and fell from his truck while pursuing the individuals who stole mail on his delivery route, constituted a deviation from his work duties in order to accomplish a personal objective or whether appellant's activity was reasonably incidental to his employment or done in fulfillment of the employing establishment's business.¹¹

In *N.B.*,¹² the employee alleged that on November 19, 2012 she sustained injuries to her head, neck, and shoulder when an unfastened metal door of a toilet paper dispenser hit her head when she entered the restroom at a McDonald's restaurant located on her mail route. The Board stated that the issue to be determined was whether the employee's restroom stop constituted a substantial deviation from her employment that would place her outside of the performance of duty. It remanded the case because the record did not contain "the policy of the employing establishment with regard to breaks for letter carriers as off-premises employees." The Board stated that OWCP should request clarification from the employing establishment as to the break policy for off-premises employees.

Similarly, the Board finds that the record in this case is also devoid of the employing establishment's policies or procedures and instruction on how letter carriers should respond if they witness the theft of mail from a mailbox. It appears that OWCP solely relied on appellant's supervisor's statement that stopping the theft of a parcel was not within the scope of appellant's duties as a letter carrier. It is well established, however, that proceedings under FECA are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ In this case, the Board finds that there is no information in the record regarding the policy of the employing establishment with regard to theft of mail packages and how letter carriers are to respond if they witness this activity. Furthermore, the record is also unclear as to whether the location of appellant's slip and fall injury was still on his mail delivery route or whether he deviated from his mail route in pursuit of the individuals who stole a package from a mailbox. Therefore, the case should be remanded for further development of the evidence regarding whether appellant was in the performance of duty on May 19, 2014 when he sustained an injury.

¹¹ *Lonnie B. Anderson*, Docket No. 94-1842 (issued July 5, 1996).

¹² Docket No. 14-1092 (issued February 26, 2015).

¹³ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

After such further development as it deems necessary, OWCP should issue an appropriate decision on this matter.¹⁴

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 20, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ Due to the disposition of this case, the remaining issue regarding the denial of appellant's October 9, 2014 reconsideration request and appellant's arguments are moot.