

**United States Department of Labor
Employees' Compensation Appeals Board**

L.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-0751
Issued: September 7, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 4, 2016 appellant filed a timely appeal from a November 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury on September 29, 2015 while in the performance of duty.

¹ The Board notes that appellant submitted additional evidence after OWCP rendered its November 23, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 29, 2015 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a back sprain, wrist sprain, and scraped left knee injury. She reported that she was crossing the street when the security guard called out to her. Appellant turned around and fell over a raised grate on the street. She noted the time of injury as 6:20 a.m. and location of injury as “A Street USPS parking area.” On the reverse side of the claim form, the employing establishment controverted the claim stating that the injury occurred off of the employing establishment’s premises.

In September 29, 2015 medical notes, Dr. Irina Popescu, Board-certified in internal medicine, reported that appellant presented to the emergency room (ER) on that date and was restricted from lifting or twisting for five days. In an October 5, 2015 attending physician report (Form CA-20) and duty status report (Form CA-17), she reported that on September 29, 2015 appellant tripped and fell on a manhole cover that was protruding because of construction. Dr. Popescu diagnosed left arm and shoulder pain and checked a box marked “yes” when asked if the condition was caused or aggravated by the employment activity, noting that the incident happened at work. Appellant was released to full duty.

By letter dated October 9, 2015, the employing establishment controverted the claim arguing that the injury did not arise during the course of employment and was not within the scope of compensable work factors. It noted that appellant’s Form CA-1 stated that she was crossing the street when she fell over a raised grate. The employing establishment alleged that the street she was crossing, A Street, was not part of the employing establishment’s premises.

By letter dated October 20, 2015, OWCP informed appellant that the evidence received failed to establish that the January 29, 2015 injury occurred as alleged or that she was in the performance of duty at the time of injury. It further stated that the medical evidence failed to provide a firm medical diagnosis with an opinion that the injury was caused by the work incident. OWCP requested additional factual and medical evidence. It requested that appellant complete a questionnaire in order to substantiate the factual basis of her claim and a medical report from her attending physician including a diagnosis, history of the injury, and a physician’s opinion on causal relationship supported by medical rationale. The questionnaire requested that she explain the circumstances surrounding the incident, including the location of the fall, whether the location was on the employing establishment’s premises, what activities she was engaged in at the time of the fall, how the injury occurred, and statements from any persons who witnessed the injury or had immediate knowledge of it. Appellant was afforded 30 days to provide the requested information. No further evidence was received from her.

In another letter dated October 20, 2015, OWCP notified the employing establishment that additional information was needed regarding the circumstances of the January 29, 2015 injury. It requested that the employing establishment complete the accompanying questionnaire.

On October 30, 2015 the employing establishment explained that at the time of injury appellant was crossing a city street and walking to the employing establishment. It explained that the street was not owned, operated, or controlled by the employing establishment. The employing establishment further stated that appellant’s assigned work shift began at 7:00 a.m.,

whereas the injury occurred at 6:20 a.m. It reported that, at the time of the injury, she was not engaged in official duties which required her to be off premises and was not performing assigned duties or any activity which, by its nature, was considered reasonably incidental to the assignment. The employing establishment further stated that appellant was walking when she was injured and no government-owned vehicle was involved.

By decision dated November 23, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that the incident occurred in the performance of duty, as alleged. It found that she had failed to establish fact of injury because she had not responded to the request for additional factual information surrounding the incident. OWCP explained that the evidence of record indicated that at the time of the incident appellant was not on the employing establishment's premises performing assigned duties. It further found that at the time of injury, 6:20 a.m., she had not yet reported for work as her regular work shift did not begin until 7:00 a.m.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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 or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, the locale and time of injury whereas, arising out of the employment, encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that 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.⁵

ANALYSIS

The Board finds that appellant has failed to establish an injury in the performance of duty on September 29, 2015.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

Appellant alleged that on September 29, 2015 she fell on a raised grate on “A Street” and sustained a back sprain, wrist sprain, and scraped left knee. Although she claimed she fell in the employing establishment “parking area,” she has failed to provide the sufficient level of detail needed to establish that the incident occurred in the performance of duty.⁶

The employing establishment disputed appellant’s claim that she had fallen on the employing establishment premises. It asserted that the street where the incident occurred was not part of its premises and was not in the care, custody, and control of it. The employing establishment claimed that the fall occurred on a city street, which was not within its jurisdiction. Without more information, the Board finds that appellant has failed to establish that her injury occurred on the premises of the employing establishment,⁷ or in the performance of duty.⁸

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board’s merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an injury in the performance of duty on September 29, 2015.

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Michael Hazzard*, Docket No. 05-1514 (issued November 4, 2005).

⁸ *See Thomas E. Kiplinger*, Docket No. 93-2359 (issued April 12, 1995).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board