

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

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**S.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Estrella, AZ, Employer**

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**Docket No. 17-1087  
Issued: August 21, 2017**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 24, 2017 appellant filed a timely appeal from a March 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a traumatic injury on January 9, 2017 in the performance of duty.

**FACTUAL HISTORY**

On January 18, 2017 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2017 at 7:20 a.m. she injured both hands, wrists,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

and elbows pushing a pumpkin into the employing establishment building when the double doors were locked. Appellant's supervisor indicated that appellant's regular work hours were from 7:00 a.m. until 3:30 p.m. with rotating days off. The employing establishment indicated that appellant was injured in the performance of duty. Appellant sought medical treatment, but did not provide documentation to the employing establishment.

In letter dated January 26, 2017, OWCP noted receiving appellant's January 18, 2017 claim form for injury on January 9, 2017 due to pushing a pumpkin into a building when the double doors were locked. It requested that she provide additional factual and medical evidence in support of her claim and afforded her 30 days for a response. No response was forthcoming.

By decision dated March 14, 2017, OWCP denied appellant's traumatic injury claim finding that she had failed to provide sufficient factual and medical evidence to establish either that she was pushing a pumpkin in the performance of her job duties or that a diagnosed medical condition resulted from this activity.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was filed within the applicable time limitation.<sup>3</sup> An employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability from work, if any was causally related to the employment injury.<sup>4</sup>

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach merely upon the existence of any employee/employing establishment relation.<sup>5</sup> FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>6</sup> The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."<sup>7</sup> "In the course of

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<sup>2</sup> *Id.*

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.*, *Elaine Pendleton*, 40 ECAB 1142, 1145 (1989).

<sup>5</sup> *Christine Lawrence*, 36 ECAB 422-24 (1985); *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948).

<sup>6</sup> *See supra* note 1.

<sup>7</sup> *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

employment” deals with the work setting, the locale, and time of injury.<sup>8</sup> In addressing this issue, the Board has held:

“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 her master’s business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.”<sup>9</sup>

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury “arising out of the employment” must be shown, and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employing establishment benefit is derived or an employment requirement gave rise to the injury.<sup>10</sup>

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, series of events or incidents, [and] within a single workday or shift. Such condition must be caused by external force, including stress, or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.”<sup>11</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>12</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>13</sup>

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such

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<sup>8</sup> *Denis F. Rafferty*, 16 ECAB 413-14 (1965).

<sup>9</sup> *Carmen B. Gutierrez*, 7 ECAB 58-9 (1954).

<sup>10</sup> *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

<sup>11</sup> 20 C.F.R. § 10.5(ee).

<sup>12</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *J.Z.*, 58 ECAB 529 (2007).

circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury on January 9, 2017 in the performance of duty.

On January 18, 2017 appellant filed a traumatic injury claim alleging on January 9, 2017 at 7:20 a.m. she injured both hands, wrists, and elbows pushing a pumpkin into the employing establishment building in the performance of duty when the double doors were locked. In its March 14, 2017 decision, OWCP accepted her assertion that she was pushing a pumpkin on January 9, 2017, but noted that she had not provided any explanation of why she was pushing the pumpkin, and that, absent an employment-related need, she had not established that her activity was incidental to her employment and she had not established this incident occurred in the performance of duty. It further noted that appellant failed to submit any medical evidence containing a medical diagnosis in connection with the events of January 9, 2017.

The Board finds that appellant has not established that her January 9, 2017 employment incident occurred in the performance of duty. While the employing establishment agreed that she was injured in the performance of duty, and her injury occurred during her normal work hours near the employing establishment premises, there is no evidence in the record that some substantial employing establishment benefit is derived or an employment requirement gave rise to the injury. Due to the dearth of factual information contained in the record, the Board is unable to conclude that appellant was required to move a pumpkin in January 9, 2017 by her employment duties or what substantial employing establishment benefit was derived from her actions.

The Board further finds that appellant has also not met her burden of proof to establish an injury due to her federal employment as she has submitted no medical evidence in support of her claim.<sup>15</sup>

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.

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<sup>14</sup> *D.B.*, 58 ECAB 464, 466-67 (2007). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.3 (August 2012).

<sup>15</sup> *T.W.*, Docket No. 15-1135 (issued August 26, 2015); *T.M.*, Docket No. 13-0577 (issued June 13, 2013) (finding that the claimant failed to submit any medical evidence and therefore failed to *prima facie* establish her claim for compensation as the result of a traumatic injury).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on January 9, 2017 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2017  
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