



## **FACTUAL HISTORY**

On March 26, 2015 appellant, then a 54-year-old project manager, filed a traumatic injury claim (Form CA-1) alleging a work-related injury to her wrists, knees, ankles, and back due to a fall at 1:20 p.m. on Wednesday, March 18, 2015. Regarding the cause of the injury, she noted, “Left diversity event at the main Treasury to return to office at 1750 Pennsylvania Avenue. Due to construction, I walked from the street to the curb and tripped over the curb.”<sup>3</sup>

On the same Form CA-1, appellant’s immediate supervisor listed appellant’s official duty station as 1750 Pennsylvania Avenue, Northwest, Washington, DC, and her regular work hours as 8:30 a.m. to 5:00 p.m., Monday through Friday. The supervisor checked a box marked “No” indicating that appellant was not in the performance of duty at the time of her claimed March 18, 2015 injury and added the comment, “Employee was walking from one GOT building to another.”

Appellant submitted a March 18, 2015 report in which an attending nurse noted that she reported falling on that date outside of the “Main Treasury building near the White House/Treasury Gate on Pennsylvania Avenue.” The nurse diagnosed “acute pain with probable injury to right ankle and wrist joints.”

X-ray testing of appellant’s knees, wrists, and lower back, obtained on March 30, 2015, revealed mild degenerative changes, but no fractures or dislocations.

In an April 28, 2015 report, Dr. Loiy H. Mustafa, an attending Board-certified orthopedic surgeon, noted that appellant reported falling while going up a curb on March 18, 2015 and he diagnosed lumbar pain, right wrist pain probably due to sprain, right knee pain probably due to flare up of osteoarthritis, and right ankle sprain particularly over the anterior talofibular ligament.

In an attending physician’s report (Form CA-20) dated April 3, 2015, Dr. Shauna Reshard, an attending Board-certified internist, noted that appellant reported falling on March 18, 2015 while stepping on a curb. She diagnosed knee, leg, ankle, and foot injury (ICD-9 code 959.7), contusion of chest wall (922.1), and wrist sprain (842.0), and checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by the employment activity. Dr. Reshard added the notation, “[Appellant’s] underlying knee arthritis was likely exacerbated/worsened by fall.” Appellant also submitted reports of periodic physical therapy sessions.

On May 5, 2015 an OWCP claims examiner telephoned appellant and asked several questions regarding her work situation and the event she attended on March 18, 2015. Appellant noted that she lived in Palm Coast, Florida, and worked remotely from there for weeks at a time. Depending on the needs of the employing establishment, she traveled to Washington, DC every four to five weeks for meetings. Appellant indicated that attendance at the event on March 18, 2015, which she described as “geared towards women for empowerment,” was voluntary in nature.<sup>4</sup> She noted that the event did not pertain to any portion of her current duties and

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<sup>3</sup> Appellant stopped work on March 18, 2015 and returned to light-duty work in mid-April 2015 with restrictions of no heavy lifting, prolonged standing, or repetitive bending.

<sup>4</sup> Appellant indicated that, in her last position, she headed up diversity in the workplace and noted that she wanted to attend the event on March 18, 2015 because the subject matter interested her.

responsibilities and responded in the affirmative when asked whether it was “more like [a for your information]/informative seminar type event.”

On May 5, 2015 an OWCP claims examiner telephoned a human resources specialist for the employing establishment and asked several questions regarding the event appellant attended on March 18, 2015. The specialist indicated that the employing establishment did not “set up” the event and that it only sponsored it to the extent that it sent notification to all of its employees of the event date, time, and location. She noted that the event was voluntary in nature and that “those who wanted could attend, [and] those who did n[ot] could continue to work.” The specialist indicated that the event was only for personal enrichment and did not “really apply to [appellant’s] duties or enhance/train her for work.” The specialist responded to the examiner’s question, “It is noted that the event was not at the employee’s actual place of employment, explain?” by explaining that the event was held in a separate Treasury building and that whoever wanted to attend would have to walk to the main building for the event and return afterwards. Again, she explained that it was only a voluntary event for those desiring to attend.

The claims examiner and the human resources specialist spoke again by telephone on May 6, 2015 at which time the specialist advised that appellant was not on travel-duty status when she worked in Washington, DC. The specialist reported that appellant would work in Washington, DC, for approximately six weeks at a time and then would telework from Palm Coast, Florida, for four weeks at a time.

In a May 7, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It noted that a conference had been held with appellant on May 5, 2015, but advised her that, if she had “need[ed] to provide additional information,” she should preview the following questions:

“1. State where you were and what you were doing at the time your injury occurred. Provide a detailed description as to how your injury occurred. (For example, if you fell, state how far you fell, how you landed, etc. If lifting was the cause of the injury, describe the object handled, its weight, what you did with it, etc.)

“2. The evidence indicates that you were injured off the premises of your employing agency; therefore, please respond to the following so that it can be determined if you were in the performance of duty when injured:

“3. Were you on agency premises and performing regularly assigned duties when the injury occurred? If you were not performing assigned duties, please explain exactly what you were doing when the injury occurred.”

Appellant submitted additional medical reports and reports of physical therapy sessions. In a May 8, 2015 report, Dr. Shawna Reshard, an attending Board-certified internist, listed the date of injury as March 18, 2015 and diagnosed right ankle sprain, right wrist sprain, and right knee pain. Appellant did not respond to the questions posed in the May 7, 2015 development letter.

By decision dated June 9, 2015, OWCP denied appellant’s claim for a March 18, 2015 work injury. It found that she had established that a medical condition was diagnosed in

connection with a March 18, 2015 incident, but that she had not established that the injury occurred in the performance of duty on that date. OWCP noted that appellant's case was denied because the evidence of record was insufficient to establish that the injury and/or medical condition arose during the course of her employment and within the scope of compensable work factors. It noted that, per her statement and the employing establishment's statement, the March 18, 2015 "diversity event" was not within the compensable work factors of her position and was of a voluntary nature to attend. OWCP indicated that appellant's attendance at the event did not arise out of her position or employment as a project manager and noted that the event was "not sponsored by the agency."

### **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.<sup>5</sup> In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place when she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.<sup>6</sup> For an employee with fixed hours and a fixed workplace, an injury that occurs on the employing establishment premises when the employee is going to or from work, before or after working hours, or at lunch time is compensable.<sup>7</sup>

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>8</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>9</sup> "Arising out of the employment" tests the causal connection between the employment and the injury; "arising in the course of employment" relates to the time, place, and work activity involved.<sup>10</sup> For the purposes of determining entitlement to compensation under FECA, "arising in the course of employment," *i.e.*, performance of duty, must be established before "arising out of the employment," *i.e.*, causal relationship, can be addressed.<sup>11</sup>

OWCP's FECA procedure manual provides that injuries arising on the premises of an employing establishment may be accepted if the employee was performing assigned duties, or was engaged in activity reasonably incidental to the employment, such as: (a) personal acts for

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<sup>5</sup> *Supra* note 1 at § 8102(a) (2000).

<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006)

<sup>7</sup> *Id.* See also *Denise A. Curry*, 51 ECAB 158, 160 (1999); *Narbik A. Karamian*, 40 ECAB 617, 618-19 (1989).

<sup>8</sup> *Supra* note 1 at § 8102(a).

<sup>9</sup> See *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>10</sup> See *Eugene G. Chin*, 39 ECAB 598, 601-02 (1988); *Clayton Varner*, 37 ECAB 248, 250 (1985).

<sup>11</sup> *Kenneth B. Wright*, 44 ECAB 176, 181 (1992).

the employee's comfort, convenience, and relaxation; (b) eating meals and snacks on the premises; or (c) taking authorized coffee breaks.<sup>12</sup>

The premises of the employer, as the term is used in workers' compensation law, is not necessarily coterminous with the property owned by the employer; it may be broader or narrower and dependent more on the relationship of the property to the employment than on the status or extent of the legal title. The term premises as it is generally used in workers' compensation law are not synonymous with property. The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases premises may include all the property owned by the employer; in other cases, even though the employer does not have ownership and control of the place where the injury occurred, the place is nevertheless considered part of the premises.<sup>13</sup>

Underlying the proximity exception to the premises rule is the principle that course of employment should extend to an injury that occurred at a point where the employee was within the range of dangers associated with the employment.<sup>14</sup> The most common ground of extensions is that the off-premises point, at which the injury occurred, lies on the only route, or at least on the normal route, which employees must traverse to reach the employing establishment, and that the special hazards of that route become the hazards of employment.<sup>15</sup> The Board has held that off-premises injuries are generally not compensable where an employee has fixed hours and a fixed place of work.

With regard to social or recreational activities, the Board has held that such activities arise in the course of employment when: (1) they occur on the premises during a lunch or recreational period as a regular incident of the employment; or (2) the employing establishment, by expressly or impliedly requiring participation, or by making the activity part of the service of the employee, brings the activity within the orbit of employment; or (3) the employing establishment derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."<sup>16</sup>

### ANALYSIS

The Board finds that the record lacks development sufficient to properly determine whether appellant was in the performance of duty at the time of her fall on March 18, 2015.<sup>17</sup> On March 26, 2015 appellant filed a traumatic injury claim alleging a work-related injury due to a fall at 1:20 p.m. on March 18, 2015. An employing establishment official noted that the event at issue was voluntary in nature, rather than mandatory, and indicated that "those who wanted could

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<sup>12</sup> *T.L.*, Docket No. 07-1692 (issued June 2, 2008); *see also* A. Larson, *The Law of Workers' Compensation* § 21.21(a).

<sup>13</sup> *Denise A. Curry*, *supra* note 7.

<sup>14</sup> *See B.H.*, Docket No. 14-0829 (issued July 8, 2015); *Linda D. Williams*, 52 ECAB 300 (2001); *Michael K. Gallagher*, 48 ECAB 610 (1997).

<sup>15</sup> *Id.*

<sup>17</sup> *See* Federal (FECA) Procedural Manual, Part 2 -- *Claims, Performance of Duty*, Chapter 2.804.5 (January 2013).

attend, [and] those who did n[o]t could continue to work.” Appellant acknowledged that it did not pertain to any portion of her current duties or responsibilities and that it was more of an informational seminar-type event. The Board finds that the record is insufficient to clearly understand the nature and purpose of the department’s sponsorship and all instructions or policies relating to attendance of the March 18, 2015 event. The evidence further fails to definitively establish whether appellant was in the performance of duty at the time as it is unknown whether she was on her unpaid lunch period, on official time, on administrative leave, or whether some other form of leave was required.<sup>18</sup>

The record is also insufficient to determine the exact location of appellant’s fall so as to allow the Board to determine whether her injury occurred on the employing establishment’s premises or whether any exceptions to the premises doctrine might exist in this case. Appellant indicated that she left the “diversity event” geared towards “Women’s Empowerment” at the Main Treasury building. Upon returning, on foot, to her duty station at 1750 Pennsylvania Avenue, she noted that she tripped while stepping from the street onto a curb and fell to the ground. The evidence of record, however, does not establish the exact location of the incident beyond appellant’s description on her claim form and a notation that the injury occurred near the gate between the Treasury building and the White House. Neither party provided definitive evidence regarding the exact location of her fall on March 18, 2015 or evidence regarding ownership of the property where she fell.<sup>19</sup> The record also does not contain any policy of the employing establishment, if one exists, for travel between the two Treasury Department buildings on Pennsylvania Avenue.<sup>20</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>21</sup> Accordingly, the June 9, 2015 decision will be set aside and the case will be remanded for further development of the record and, after such further development, to issue a *de novo* decision.

### CONCLUSION

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

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<sup>18</sup> See *supra* notes 6 to 18.

<sup>19</sup> *Supra* note 14.

<sup>20</sup> *M.R.*, Docket No. 07-596 (issued June 8, 2007).

<sup>21</sup> *M.M.*, Docket No. 07-1842 (issued November 20, 2007); *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 9, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 21, 2017  
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