

employing establishment at approximately 6:00 p.m. when he stumbled and fell onto his face. He alleged that he sustained a head injury including a laceration which required three stitches. On the reverse of the claim form, appellant's supervisor indicated that appellant's regular work hours were from 8:00 a.m. until 4:30 p.m. The form question regarding whether appellant was in the performance of duty was unanswered and left blank.

On July 11, 2011 Dr. Peter B. Letarte, a Board-certified neurosurgeon, examined appellant due to several falls "indicating gait instability." Appellant submitted a July 28, 2011 note from Dr. Bharat Samy, a Board-certified internist, which indicated that appellant had fallen in May and sustained a head laceration. Dr. Samy noted that the likely etiology of appellant's fall was his left hip replacement and an unsteady gait as he had no loss of consciousness. Dr. James A. Cummings, an internist, diagnosed laceration on October 17, 2011 and noted that appellant had lost his balance and fallen on May 16, 2011.

On July 29, 2011 appellant noted that OWCP had previously accepted a left rotator cuff tear on March 23, 2011.² He fell again on May 16, 2011 and believed that his falls were caused by spinal stenosis resulting in cervical myelopathy.

Appellant retired from the employing establishment on December 31, 2012.

Appellant filed a recurrence claim (Form CA-2a) on May 17, 2016 alleging that on May 16, 2011 between 4:00 p.m. and 5:00 p.m. he had sustained a fall in the performance of duty resulting in a head laceration. He was leaving work and walking to the parking lot when he fell head first down an aluminum ramp leading to the parking lot.

In a letter dated April 13, 2016, OWCP informed appellant that, when his 2011 claim had been received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on this, payment of a limited amount of medical expenses had been administratively approved without formal consideration of the merits of his claim. OWCP advised him that the claim would be reopened because he filed a claim for a recurrence of disability.

By decision dated May 16, 2016, OWCP denied appellant's traumatic injury claim finding that he had not established a causal relationship between his diagnosed condition and an employment incident.

Appellant requested reconsideration on July 18, 2016 and explained that he experienced two falls: one on March 23, and one on May 16, 2011. He noted that he injured his head on both occasions and the second fall resulted in stitches. Appellant indicated that he was seeking treatment for lack of balance, weakness in both legs, and the inability to move around without a cane or walker. He indicated that while awaiting surgery for his left shoulder condition he sustained a second fall. Appellant was unaware of whether the first fall caused the second fall or whether the second fall resulted in his ongoing loss of balance, weakness in both legs, and inability to walk without a cane or walker.

² The claim for the March 23, 2011 injury, adjudicated under OWCP File No. xxxxxx226, is not presently before the Board.

On July 28, 2016 OWCP requested additional evidence from the employing establishment regarding appellant's May 16, 2011 fall. In a separate letter dated July 28, 2016, it informed appellant that the evidence was insufficient to establish that he was injured in the performance of duty on May 16, 2011. OWCP requested that appellant respond to specific factual inquires.

Appellant responded to OWCP's request for information on August 8, 2016 and noted that on May 16, 2011 he was leaving the employing establishment and walking to the parking lot. He fell while walking down a metal ramp attached to the curb. Appellant landed on concrete hitting his head first. He noted that he was frequently required to work overtime depending on the circumstances of the day. Appellant concluded, "I do not recall why I stayed late on that day."

Appellant submitted a note dated May 16, 2011 from Dr. Tonye Teme, an internist, indicating that appellant fell leaving the employing establishment premises and sustained a laceration to his left eyebrow. Following his initial fall on March 23, 2011 he started to walk with the aid of a walker. Appellant also submitted an August 19, 2016 note from Dr. Alicia Myers, a chiropractor.

By decision dated September 30, 2016, OWCP modified its prior decision to find that appellant had not established that the incident on May 16, 2011 occurred in the performance of duty. It found that appellant's fall occurred outside his regular-duty hours as there was no evidence presented to show that he was authorized to work past his regular shift and was, therefore, not in the performance of duty.³

LEGAL PRECEDENT

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 her employment; liability does not attach merely upon the existence of any employee/employer relation.⁴ 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.⁵ 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

³ OWCP also found that, assuming appellant was in the performance of duty on May 16, 2011, the medical evidence did not establish a causal relationship between the claimed condition and the incident.

⁴ *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948); *Christine Lawrence*, 36 ECAB 422, 423-24 (1985).

⁵ See 5 U.S.C. § 8101 *et seq.*

in the course of employment.”⁶ “In the course of employment” deals with the work setting, the locale, and time of injury.⁷ 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 his 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.”⁸

This alone is insufficient 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 employer benefit is derived or an employment requirement gave rise to the injury.⁹

The Board has included within the performance of duty a reasonable interval before and after work to allow for coming and going, as well as personal ministrations, such as lunch or bathroom breaks, engaged in for the benefit of the employing establishment.¹⁰ If the injury does not take place during those periods or on employing establishment premises, the Board will place special emphasis on whether the employee was engaged in an activity related to fulfilling the duties of his employment.¹¹ The Board has denied compensation to an employee who tripped on a loose floorboard after arriving at work 25 minutes early to get coffee and breakfast.¹² In *George E. Franks*,¹³ an employee failed to establish an injury in the performance of duty with respect to a fall in the parking lot of an Army base that occurred 45 minutes prior to the start of his shift. The Board found that the action he was performing at the time, getting coffee and breakfast, was solely personal in nature. In *John F. Castro*,¹⁴ the Board granted recovery when an employee was injured in an automobile accident at a naval station five minutes after the end of his shift. In *Michael A. Hazzard*,¹⁵ the Board found that no evidence was presented that

⁶ *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

⁷ *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

⁸ *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

⁹ See *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

¹⁰ *George E. Franks*, 52 ECAB 474 (2001).

¹¹ See *Venicee Howell*, 48 ECAB 414 (1997); *Narbik A. Karamian*, 40 ECAB 617 (1989).

¹² *T.F.*, Docket No. 09-154 (issued July 16, 2009).

¹³ 52 ECAB 474 (2001).

¹⁴ Docket No. 03-1653 (issued May 14, 2004).

¹⁵ Docket No. 05-1514 (issued November 4, 2005).

appellant's presence on the premises an hour and a half after his shift ended was required by his employment or in the furtherance of his employer's business such that his injury occurred in the performance of duty.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his May 16, 2011 fall occurred in the performance of duty, as alleged.

Appellant filed a traumatic injury claim on May 18, 2011 and indicated that he fell on May 16, 2011 at 6:00 p.m. while leaving the employing establishment premises. The employing establishment indicated that appellant's regular-duty hours were from 8:00 a.m. until 4:30 p.m. Appellant was unable to recollect why he remained on the employing establishment premises for an hour and a half after his work shift ended and he failed to present any evidence, such as payroll records to establish his activity prior to the fall. As in *Hazzard*¹⁶ no evidence was presented that appellant's presence on the premises after work was required as a condition of his employment or that he was involved in any activity reasonably incidental to his employment during that period of time. Therefore, he was not in the course of his federal employment at the time of injury. Appellant was present on the employing establishment's premises, but has not established that he was engaged in any activity in furtherance of the employer's business or any activity incidental thereto. Thus, the Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on May 16, 2011, as alleged.

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT that September 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board