

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on February 7, 2017, as alleged.

FACTUAL HISTORY

On February 14, 2017 appellant, then a 61-year-old account executive, filed a traumatic injury claim (Form CA-1) alleging that, at 11:45 a.m. on February 7, 2017, she sustained an injury to the right side of her body while in the performance of duty. She indicated that she was seated in a chair during lunch when it collapsed under her, causing her to fall into other furniture.³ Appellant listed the location of the accident as near the coffee stand on the main level of the building at 310 W. Wisconsin Avenue in Milwaukee, Wisconsin. She stopped work on February 8, 2017 and returned to work on February 9, 2017. On the reverse side of the claim form, appellant's immediate supervisor checked a box marked "No" indicating that appellant was not injured in the performance of duty on February 7, 2017 and advised that the employing establishment was controverting the "performance of duty/premise[s] issue."

In an unsigned February 7, 2017 return to work report, an unidentified individual indicated that appellant was seen on February 7, 2017 by Dr. Myron O. Bodnar, an attending Board-certified internist, for an injury reported as occurring on that date. The individual listed the diagnoses of right shoulder and right hip injuries (initial encounter) and noted that appellant could return to work on February 9, 2017 without restrictions.

In a February 16, 2017 letter, a workers' compensation specialist indicated that the employing establishment was controverting appellant's claim for a February 7, 2017 employment injury due to insufficient evidence to establish that it occurred in the performance of duty. The specialist indicated that an employee must be on the employing establishment premises to be covered under FECA, and that such premises include areas that are federally-owned or maintained. She noted that appellant produced a February 16, 2017 e-mail statement, sent to the workers' compensation department of the employing establishment in which she advised that the coffee stand where she was injured on February 7, 2017 was a space shared by federal, state, and private sector parties.⁴

In a February 27, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. It

³ Appellant indicated that she was already experiencing nerve and joint pain prior to her claimed February 7, 2017 accident, but that the accident reinjured the right side of her body. A coworker provided a statement on the claim form that she witnessed appellant's chair collapse on February 7, 2017, which caused her to fall into other furniture.

⁴ OWCP attached a copy of appellant's February 16, 2017 e-mail statement in which she indicated that the coffee stand where she was injured on February 7, 2017 was located on the mezzanine level of the building, and that it was a space shared by federal, state, and private sector parties. Appellant listed the name of the property manager of the coffee stand, an employee of Urban Retail Properties Co. She indicated that she fell from a high counter top metal chair. Several pages printed from the internet were also added to the case record, including a description of Urban Retail Properties Co. and partially redacted contact information for the property manager.

requested that appellant complete and return an attached questionnaire which posed various questions regarding the circumstances of her claimed February 7, 2017 employment injury, including whether she was on the employing establishment premises at the time and whether she was performing her regularly assigned duties. On February 27, 2017 OWCP also requested that the employing establishment answer several questions, including whether, at the time of the claimed employment injury, appellant was on premises which were owned, operated, or controlled by the employing establishment, and whether she was performing official duties or engaged in activities reasonably incidental to her job.

In a March 6, 2017 letter, the workers' compensation specialist for the employing establishment responded to OWCP's February 27, 2017 request for more information. The specialist indicated that, at the time of the claimed February 7, 2017 employment injury, appellant was not on premises owned, operated, or controlled by the employing establishment. She advised that the owner of the property where the accident occurred at 11:45 a.m. on February 7, 2017 was Urban Retail Properties. Although the coffee stand where the accident occurred was located inside the same building as appellant's office, it was a common-type area shared by federal, state, and private sector parties. The specialist reported that, at the time of the claimed injury, appellant was on her lunch break off the employing establishment premises. Appellant was not in travel status and was not performing her regular duties.

Appellant submitted a March 16, 2017 attending physician's report (Form CA-20) from Dr. Matthew Wichman, an attending Board-certified orthopedic surgeon, who listed the history of injury as a fall at work on February 7, 2017 injuring the shoulder and hip. Dr. Wichman diagnosed adhesive capsulitis of the right shoulder and osteoarthritis of the right hip. He determined that appellant was totally disabled from February 7 to 8, 2017 and could return to her regular work on February 9, 2017. In a March 16, 2017 duty status report (CA-17), Dr. Wichman indicated that appellant could resume her regular work on February 9, 2017 without restrictions.

In a March 29, 2017 decision, OWCP denied appellant's claim for a February 7, 2017 employment injury. It determined that appellant established that she was a federal civilian employee who filed a timely claim, that the injury, accident, or employment factor occurred, and that a medical condition had been diagnosed in connection with an injury or event. OWCP further found, however, that appellant's claim for a February 7, 2017 employment injury was denied on the basis that the element of performance of duty had not been met. It asserted that the evidence of record did not establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. OWCP advised that the reason for this finding was that appellant was at lunch and not performing any company business at the time of the claimed injury on February 7, 2017. It also found that appellant had not submitted rationalized medical evidence establishing that a medical condition was causally related to the work injury or event.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

FECA provides for payment of compensation for personal injuries sustained while in the performance of duty.⁸ The Board has interpreted the phrase “in the performance of duty” as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of employment.”⁹ To occur in the course of employment, an injury generally must occur: (1) at a time when the employee may be reasonably said to be engaged in the 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.¹⁰

With respect to employees having fixed hours and a fixed place of work, the Board has recognized the general “premises rule” that injuries that occur off premises while going to or coming from work or during an employee’s lunch period are not compensable because they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.¹¹

In defining the parameters of an employing establishment’s premises, the Board has indicated that the premises of the employing establishment, as that term is used in workers’ compensation law, are not necessarily coterminous with the property owned by the employer. They may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of legal title.¹² Therefore, the Board considers whether the area giving rise to the injury is part of either the actual or constructive premises of the

⁵ See *supra* note 2.

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁸ 5 U.S.C. § 8102(a).

⁹ *Charles E. McAndrews*, 55 ECAB 711 (2004); *Charles Crawford*, 40 ECAB 474 (1989).

¹⁰ *Robert T. Romans*, 53 ECAB 620 (2002).

¹¹ *Mary Keszler*, 38 ECAB 735 (1987).

¹² *D.B.*, Docket No. 13-0510 (issued June 10, 2013); *Dollie J. Braxton*, 37 ECAB 186 (1985).

employing establishment and, to determine actual premises, the Board generally looks to whether the area giving rise to the injury is owned or controlled by the employing establishment.¹³

If the injury does not occur on the actual premises, the Board looks to whether it occurred on the constructive premises.¹⁴ The Board may, under special circumstances, constructively extend the employing establishment's premises to the area giving rise to the injury pursuant to the proximity rule.¹⁵ Such circumstances exist, for example, if the employing establishment has contracted for exclusive use of the area or maintains the area to see who may gain access to it, or if the area is used exclusively or principally by employees for the convenience of the employing establishment.¹⁶ Mere use, alone, is not sufficient to bring the area within the premises of the employer.¹⁷

Exceptions to the premises doctrine have been made to protect activities that are so closely related to the employment itself as to be incidental thereto,¹⁸ or which are in the nature of necessary personal comfort or ministrations.¹⁹

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish an injury in the performance of duty on February 7, 2017.

Appellant filed a traumatic injury claim alleging that, at 11:45 a.m. on February 7, 2017, she sustained an injury to the right side of her body. She indicated that she was seated in a chair during lunch when it collapsed under her, causing her to fall into other furniture. Appellant listed the location of the accident as near the coffee stand on the main level of the building in which she worked. OWCP denied appellant's claim for a February 7, 2017 employment injury, finding that it did not occur in the performance of duty.

The Board finds that OWCP did not provide adequate facts and findings in its March 29, 2017 decision regarding the reason it denied appellant's claim for a February 7, 2017 work injury. OWCP concluded that appellant was not in the performance of duty at the time of her February 7, 2017 accident, but it did not provide a clear explanation of how it reached this conclusion. Most significantly, it did not make a determination regarding whether appellant was actually on the employing establishment premises at the time of the accident. As noted above, the question of

¹³ *F.L.*, Docket No. 15-1172 (issued October 2, 2015); *Albert L. Young*, Docket No. 97-2130 (issued June 25, 1999).

¹⁴ *J.B.*, Docket No. 17-0378 (issued December 22, 2017).

¹⁵ *M.P.*, Docket No. 10-0054 (issued July 27, 2010).

¹⁶ *C.K.*, Docket No. 11-0905 (issued October 19, 2011); *R.R.*, Docket No. 07-1929 (issued October 22, 2008).

¹⁷ *K.P.*, Docket No. 12-1033 (issued December 6, 2012).

¹⁸ See *Maryann Battista*, 50 ECAB 343 (1999) (activities such as delivering a bad check list and checking on a customer's telephone were incidental to employee's listed duties).

¹⁹ *J.L.*, Docket No. 14-0368 (issued August 22, 2014).

whether a given claimed injury occurred on the premises of an employing establishment is an important component in determining whether an injury occurred in the performance of duty.²⁰ In its cursory March 29, 2017 decision, OWCP solely based its decision relative on the single fact that appellant was at lunch and was not performing any company business at the time of the claimed injury on February 7, 2017. However, it did not explore the premises issue, nor did it consider whether her accident would be covered under various recognized exceptions such as the personal comfort and ministrations doctrine.²¹

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.²² Its procedures further specify that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."²³ These requirements are supported by Board precedent.²⁴

For the above-noted reasons, appellant would not understand the reason for OWCP's disallowance of her claim and the evidence necessary to overcome the defect of her claim. Therefore, the case will be remanded to OWCP for further development, including the issuance of a *de novo* decision containing adequate facts and findings and a statement of reasons regarding appellant's claim for a February 7, 2017 work injury.²⁵

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish an injury in the performance of duty on February 7, 2017. The case is remanded to OWCP for further development.

²⁰ See *supra* notes 10 through 17.

²¹ See *supra* notes 18 through 19.

²² 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

²³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

²⁴ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

²⁵ See *supra* notes 22 through 24.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: April 12, 2018
Washington, DC

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

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

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