United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 18-0465**
	)	**Issued: August 1, 2018**
U.S. POSTAL SERVICE, MEDICAL UNIT, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 8, 2018 appellant, through counsel, filed a timely appeal from a November 27, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on December 16, 2016, as alleged.

FACTUAL HISTORY

On December 16, 2016 appellant, then a 50-year-old occupational health nurse, filed a traumatic injury claim (Form CA-1) alleging that, at 10:10 a.m. on December 16, 2016, she sustained an injury when she slipped and fell on black ice located in the front of the building where she worked.[3] She asserted that she injured her entire right side, right knee, right ankle, back, and shoulder. Appellant did not stop work.

On the reverse 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 December 16, 2016 as alleged. The supervisor added the notation, "Placing personal items in her car on the clock."

Appellant submitted a portion of an authorization for examination and/or treatment form (Form CA-16) which was completed on December 17, 2016 by Dr. Olivia Batmanghelichi, an attending family practitioner.[4]

In a January 12, 2017 development letter, OWCP requested that appellant submit additional factual information describing how the claimed December 16, 2016 injury occurred. It asked appellant to indicate whether she was on a personal break when the incident occurred, and whether she was required to go to her car while on break. OWCP also requested that appellant submit a report from an attending physician which included a medical explanation as to how the reported work incident caused or aggravated a medical condition.

Appellant submitted a January 28, 2017 statement in which she asserted that on December 16, 2016, while at work performing her duties, she was instructed by her immediate supervisor to move her workstation belongings to the medical unit. She noted that she did not have enough space to put all her belongings in the new location, so she eliminated items that she did not need and that could be placed in her car (which was parked in front of the building where she worked). Appellant advised that, in the performance of her job duties, she also had to mail several employees' letters at the post office which was located outside the building approximately 15 to 20 feet from the main employee entrance. She indicated that it was a regular practice for nurses to walk to the building next door to mail letters *via* Priority Mail, which was the only way to mail letters of importance requiring receipts. Appellant asserted that she had to go outside of her work building to get to the building next door because a security door prevented her from passing between buildings without going outside.

[3] Appellant listed the location of her fall as 1401 West Fort Street, Detroit, MI.

[4] Dr. Batmanghelichi referenced a December 16, 2016 fall in front of appellant's work building and provided diagnoses which were illegible.

Appellant reported that she packed a box with the belongings from her workstation (such as awards and health fair materials), placed the box on a cart, and rolled the cart downstairs and off the elevator. She pushed the cart outside the door of the building, placed the items into her car, and then proceeded to push the cart back inside. Appellant advised that she turned and slipped, falling on a black sheet of unsalted ice on the ground in front of her work building. She fell on her entire backside, right shoulder, and right knee. Appellant indicated that she was not on a personal break, was never off the clock, and was performing duties assigned by her supervisor. She asserted that nurses always had permission from supervisors to go to their vehicles or the store, to pick up lunch across the street, or to take a short walk around the building without verbal permission.

Appellant submitted a photograph which she asserted showed where the December 16, 2016 fall occurred and two photographs depicting a door with a sign noting that badge access to the door was restricted to limited personnel. She also submitted e-mails documenting her leave issues prior to December 16, 2016, an October 27, 2016 notice of removal for failure to adhere to attendance regulations, and a claim for compensation (Form CA-7) for the period December 16, 2016 to January 23, 2017.

In a December 18, 2016 statement, a former coworker asserted that she worked at the employing establishment until September 2016 and that the medical unit nurses were always able to leave the building for brief periods to go to the store, pick up lunch, and drop off mail without clocking in or out.

In a February 4, 2017 statement, another former coworker noted that she used to work in the medical unit as a clerk and she asserted that she was never told that she could not leave the building where she worked or had to clock out to get lunch across the street or to go to her car.

In a February 23, 2017 e-mail to several employing establishment officials, appellant's immediate supervisor advised that, on December 16, 2016, she had asked appellant to empty her desk and bring the contents to the medical unit. She indicated that she received a call from appellant a short time after the request and she reported that she hurt her ankle "outside on the sidewalk." The immediate supervisor noted that she then asked appellant what she was doing outside. She advised that she had not given appellant permission to move her car and fill her car with items from her workplace. The immediate supervisor asserted that appellant did not inform her that she was engaging in such activities. She indicated that appellant was still on the clock at the time of her claimed injury and asserted that she was not allowed to leave the building, unless she was going out to lunch and/or off the clock.

In an unsigned December 16, 2016 statement, an unidentified individual indicated that appellant was approached at approximately 9:30 a.m. on December 16, 2016 to confirm that she had gotten the e-mail advising her that her computer was being moved to the third floor. The individual asked appellant when she was going to arrive at the medical unit. Appellant responded that she had a lot of items to move and she was told that she could use a cart. At approximately 10:15 a.m., appellant indicated that she had a lot of personal items, including plants, that she had taken to her car, and that she had to make a report because she had fallen. The individual told appellant that she could not leave the building if she was on the clock, unless it was lunch, and appellant responded that she did not know that policy. Appellant later questioned why she could not leave the building to take a break or to go to her car that was parked in front of the building

and the individual responded that it was the policy of the employing establishment. She later walked the individual out to the location where she claimed she had fallen, and said that the fall occurred "on the curb and the street." The individual indicated that appellant advised that she had since moved her car.

Appellant also submitted a December 17, 2016 attending physician's report (Form CA-20) and January 21, 2017 note from Dr. Batmanghelichi who diagnosed back, right shoulder, and right foot contusions due to the December 16, 2016 fall. In a February 12, 2017 report, Dr. Batmanghelichi diagnosed sprains/strains of the cervical, thoracic, and lumbar spines, cervical spondylosis without myelopathy, lumbosacral spondylosis without myelopathy, radiculopathy, headaches, right shoulder/arm strain, right shoulder contusion with exacerbation, and possible acute tendinitis secondary to the December 16, 2016 fall.

By decision dated February 27, 2017, OWCP denied appellant's claim, finding that the evidence of record did not establish that the injury was sustained in the performance of duty on December 16, 2016 as alleged. It found that appellant was not in the performance of her regularly assigned work duties when she fell because she chose to put personal items into her car. OWCP noted that such placing of personal items into her car was not incidental to her employment. It also found that there was no indication that appellant had to mail employees' letters on December 16, 2016 as part of her work duties.

On March 27, 2017 appellant, through counsel, requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review.

During the hearing held on September 13, 2017, counsel argued that on December 16, 2016 appellant was not involved in personal business or something not associated with her work and asserted that, if appellant was moving personal items, it was for the benefit of the employing establishment. He argued that, when moving workstations, the employing establishment would expect that personal items would be removed as part of the change. Counsel claimed that mailing certified letters was part of appellant's job duties and that this was another work function that she performed on December 16, 2016. He asserted that appellant described a logical path of movement and that she did not deviate from her employment because she fell as she returned towards the building to mail letters as part of her work duties.

Appellant testified that on December 16, 2016 her immediate supervisor had directed her to move her work space because she wanted her back in the medical unit area with the rest of the staff. She indicated that she loaded a cart with belongings she was moving to her new area, along with some personal items and letters. Appellant took an elevator down to the main floor, and went out the door of her work building with the cart in order to place some belongings in her car that was right in front of her work building. She noted that, after placing items in her car, she turned around and slipped on some ice. Appellant fell directly in front of the entrance of the employing establishment, *i.e.*, the entrance that led back to the medical unit. She testified that several times per week, as part of her job duties, she copied medical records requested by postal workers and mailed them using either a Priority or certified mail service. Appellant noted that to mail these records she had to leave her work building though the main entrance/exit and go next door. Appellant asserted that she previously had been able to go to her car if she had left something such as her lunch or a bag. She testified that she was punched in, using a timecard, at the time of her

fall on December 16, 2016 and that she was not required to punch out in order to post mail or to move items at the direct order of her immediate supervisor.

In a September 29, 2017 letter, the employing establishment's manager of health and resource management advised that by regulation craft employees such as appellant were not to leave the work facility while on the clock unless they were performing some or all of their assigned duties. He contended that appellant was not performing any of her assigned duties while putting her personal items in her personal car. The manager also asserted that personal vehicles could not park for extended periods in front of the employing establishment's building, with employees only being allowed to have their vehicles there for a brief period to run in and out of the building. He also asserted that taking mail to a retail counter at that time of the morning identified by appellant was counter to the employing establishment's operating procedures. The manager noted that there was an outgoing mail receptacle that was collected and taken to the retail area daily by the general clerk. He indicated that traveling to the building next door did not require one to go to the main floor and out the exit of the employing establishment's building. The manager asserted that appellant knew there was an access gate on the fifth floor that she had access to and that she could use to roll a cart through.

In an October 25, 2017 statement, appellant responded to the September 29, 2017 letter by contending that the medical unit nurses always were allowed to go out of the building without permission and without punching out. She asserted that they were allowed to park in front of the building and indicated that, just recently, the "parking allowed" signs had been covered up with plastic tape by the employing establishment.[5] Appellant also submitted copies of October 2, 2017 disability slips from Dr. Batmanghelichi.

By decision dated November 27, 2017, OWCP's hearing representative affirmed OWCP's February 27, 2017 decision. She found that appellant failed to meet her burden of proof to establish an injury in the performance of duty on December 16, 2016. She discussed why appellant was not in the performance of duty at the time of her fall, noting that there was no employment requirement that appellant move personal items to her car at that time. The hearing representative indicated that appellant chose to take herself out of her employment to engage in a personal objective, *i.e.*, moving personal items to her car, at the time the injury occurred. She also found that the evidence did not show that appellant was carrying out an employment activity of posting work-related mail around the time she fell.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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

[5] Appellant also submitted photographs which she claimed, in an attached note, showed cars parked in front of her work building at 1401 West Fort Street and of a sign partially covered by tape.

[6] *See supra* note 2.

related to the employment injury.[7] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

FECA provides for payment of compensation for personal injuries sustained while in the performance of duty.[9] 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.[10] 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.[11]

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.[12]

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.[13] Therefore, the Board considers whether the area giving rise to the injury is part of either the actual or constructive premises of the 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.[14]

If the injury does not occur on the actual premises, the Board looks to whether it occurred on the constructive premises.[15] The Board may, under special circumstances, constructively

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

[8] *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).

[9] 5 U.S.C. § 8102(a).

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

[11] *Robert T. Romans*, 53 ECAB 620 (2002).

[12] *Mary Keszler*, 38 ECAB 735 (1987).

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

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

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

extend the employing establishment's premises to the area giving rise to the injury pursuant to the proximity rule.[16] 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.[17] Mere use, alone, is not sufficient to bring the area within the premises of the employer.[18]

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish an injury in the performance of duty on December 16, 2016, as alleged.

Appellant filed a claim alleging that on December 16, 2016 she sustained injury when she slipped and fell on black ice located in the front of the building where she worked. She asserted that, when she fell, she had just placed items in her car as part of her supervisor's instructions to move to another workplace and that, if she had not fallen, she would have mailed several work-related letters as part of her employment duties.

The Board finds that OWCP did not provide adequate facts and findings in its decisions regarding the reason it denied appellant's claim for a December 16, 2016 employment injury. OWCP concluded that appellant was not in the performance of duty at the time of her December 16, 2016 accident, but it did not provide a complete 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 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.[19] In its February 27 and November 27, 2017 decisions, OWCP based its denial of appellant's claim on its conclusion that appellant was not performing any company business at the time of the claimed injury on December 16, 2016. However, it did not explore the premises issue, including whether the claimed injury occurred on the premises under the proximity rule.[20]

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

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

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

[19] *See supra* notes 11 through 18.

[20] *See A.C.*, Docket No. 17-1927 (issued April 12, 2018) (case remanded to OWCP to fully consider premises doctrine and other matters relevant to determination of whether claimed injury occurred in the performance of duty).

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.[21] OWCP's 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."[22] These requirements are supported by Board precedent.[23]

For the above-noted reasons, appellant would not fully 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 December 16, 2016 employment injury.[24]

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish an injury in the performance of duty on December 16, 2016, as alleged.

[21] 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."

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

[23] *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

[24] Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for an employment injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for action consistent with this decision.

Issued: August 1, 2018
Washington, DC

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

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

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