

front door of his residence when he stepped outside for some air. Appellant returned to telework, but then stopped telework at 5:30 p.m. and visited an urgent care center. He was ultimately diagnosed with two transverse process lumbar spine fractures at L2 and L3.

By decision dated February 9, 2017, OWCP denied appellant's claim finding that he had not sustained an injury in the performance of duty. It found that he was injured at home while on break from teleworking and was not engaged in work activity at the time of his injury.

On March 16, 2017 appellant requested a telephonic hearing before an OWCP hearing representative and submitted additional medical evidence.

A telephonic hearing was held on September 18, 2017. Appellant testified that he took a break from teleworking at approximately 8:15 a.m. As he stepped outside onto his porch, he slipped and fell. Appellant noted that he worked throughout the day but, by the end of the day, he was in excruciating pain. He sought medical treatment at the urgent care center that evening and was told that he had fractured his back in two areas.

Appellant argued that since he was on break at the time of injury, his injury should be accepted. On the date of injury, he testified that he started teleworking at 7:00 a.m. and tried to take his break prior to client appointments, which started at 9:00 a.m.

By decision dated December 1, 2017, an OWCP hearing representative affirmed OWCP's February 9, 2017 decision. She found that, at the time of the fall, appellant was on a personal break unrelated to the actual performance of his job duties. Accordingly, appellant had not established that the injury occurred in the performance of his federal employment duties.

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."² The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."³ The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master's business, at a place where the employee may reasonably be expected to be in connection with the employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.⁴ 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

² 5 U.S.C. § 8102(a).

³ See *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

⁴ See *M.T.*, *id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.⁵

The personal comfort doctrine, evolved to provide coverage to employees while injured on the employing establishment's premises when ministering to their personal comfort. An employer can exercise control of the work environment on the employing establishment premises and can maintain safety to reduce the likelihood of workplace injury. However, the environment of an employee's home is not under the employer's control and is, accordingly, treated differently from an injury that occurs on the premises of the employing establishment.⁶

As to telework or flexiplace arrangements, OWCP has exercised its discretion under FECA to exclude the personal comfort doctrine from situations in which an employee is performing work at home.⁷ The Board has therefore found that the personal comfort doctrine does not extend to the premises of the employee and therefore an employee is not covered when he or she uses the bathroom, gets coffee, or seeks fresh air.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury occurred on December 12, 2016 while in the performance of duty, as alleged.

It is undisputed that on December 12, 2016 appellant injured his back when he slipped and fell on his porch. He was teleworking on that date at his home, an alternate duty station. Appellant related that he was on break and had stepped outside onto his porch to get a breath of fresh air. He slipped and fell, causing injury to his back.

Appellant contends that his injury is compensable because he was injured while on break at his residence, an alternative duty station. For employees performing official duties at home, which are generally off the premises of the employing establishment, OWCP has provided that employees must be directly engaged in the performance of their duties to be covered under FECA.⁹

Appellant, by his own admission, was on break from his official job duties and had walked outside onto his porch when the fall occurred. When he left his desk and walked onto his porch to take a break from his official job duties, he was no longer in the performance of duty. There is no evidence that at the time of the injury that appellant was in fact doing something for the employing establishment.¹⁰ Appellant's action of walking outside to his porch during his break was for his

⁵ See *M.T.*, *supra* note 3; *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

⁶ See *S.F.*, *supra* note 3; *Mona M. Tate*, 55 ECAB 128 (2003);

⁷ FECA Bulletin No. 98-09 (issued June 5, 1998). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992).

⁸ *S.F.*, *supra* note 3.

⁹ See *S.F.*, *supra* note 3; *Mona M. Tate*, *supra* note 6; *Julietta M. Reynolds*, 50 ECAB 529 (1999).

¹⁰ See *M.T.*, *supra* note 3.

own personal comfort, which is not recognized as a doctrine applicable to an employee injured at his own residence under telework or flexiplace. At the time of the slip and fall, it cannot be said that he was engaged in an activity essential to his employment or reasonably incidental to the duties that he was hired to perform.¹¹ The Board thus finds that the injury he sustained did not occur in the performance of his federal employment duties.

For these reasons, the Board finds that appellant has not met his burden of proof to establish an injury on December 12, 2016 in the performance of duty, as alleged.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury on December 12, 2016 in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2019
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

¹¹ See *S.F.*, *supra* note 3.