

FACTUAL HISTORY

On June 20, 2017 appellant, then a 33-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that, on June 12, 2017, she injured her back, left arm, left wrist, left shoulder, and left side of her neck while assisting a delivery person with carrying a file cabinet at her home. She noted that she was teleworking at the time of the injury and the employing establishment had ordered the file cabinet to be delivered to her approved telework site. Appellant did not stop work.

The record contains reports from the period July 17 to October 25, 2017, in which Dr. Adam Hassan Saby, a specialist in physical medicine and rehabilitation, diagnosed left trapezius and wrist sprain. Dr. Saby noted that appellant's injury occurred on June 12, 2017 while assisting a delivery person with carrying a cabinet sent by the employing establishment into her home.

In a September 25, 2017 development letter, OWCP informed appellant that when her claim was initially received it appeared to be a minor injury that resulted in minimal or no lost time from work and, thus, was being handled administratively with immediate authorization for payment of medical expenses up to \$1,500.00. However, because a claim for wage-loss compensation was received, the claim was reopened for formal adjudication. OWCP advised appellant of the type of evidence needed to establish her claim and provided a questionnaire for her completion. By separate letter dated September 25, 2017, it requested additional information from the employing establishment regarding whether she was in the performance of duty at the time of the alleged injury. OWCP afforded appellant and the employing establishment 30 days to provide the requested information.

In an e-mail dated October 17, 2017, the employing establishment related that appellant was eligible for telework and that a file cabinet had been ordered to allow her to store files in a locked and secured space. The file cabinet was paid for by the employing establishment. The employing establishment related that appellant was "not expected" to assist the delivery person with carrying the cabinet into her home.

On November 6, 2017 OWCP received appellant's response to its September 25, 2017 development letter. Appellant stated that she had noted on the file cabinet order form that delivery to her home would involve stairs. When the delivery person arrived on June 12, 2017, he advised that carrying the cabinet up the stairs by himself would be difficult. Appellant noted that she asked whether he would like to reschedule the delivery so he could have a coworker assist him. He then asked whether anyone was present who could help, but when she answered no, he attempted to handle the cabinet by himself. While carrying it up the stairs, he requested appellant's assistance, which she provided. Near the top of the stairs, the delivery person had difficulty turning the cabinet around. At this point, the weight of the cabinet increased on appellant and she began to feel weak. She told the delivery person that she could not hold onto the cabinet much longer. Immediately following this incident appellant felt sore.

By decision dated November 15, 2017, OWCP denied appellant's claim, finding that the claimed June 12, 2017 injury did not arise in the performance of duty. It noted that she had not

responded to its September 25, 2017 development letter. OWCP found that appellant assisting the delivery person was not within her job duties, nor was she expected to aid the delivery person.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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.”⁵ 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.”⁶ 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 said to be engaged in the master’s business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁷ This alone is not sufficient 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.⁸

OWCP’s procedures address off-premises injuries sustained by workers at home:

“Ordinarily, the protection of [FECA] does not extend to the employee’s home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employing

³ See *R.E.*, Docket No. 17-0547 (issued November 13, 2018); see also *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 5 U.S.C. § 8102(a).

⁶ *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

⁷ *D.L.*, 58 ECAB 667 (2007); *Mary Keszler*, 38 ECAB 735, 739 (1987).

⁸ *M.T.*, Docket No. 16-0927 (issued February 13, 2017); *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005); *Eugene G. Chin*, 39 ECAB 598 (1988).

establishment. The official superior should be requested to submit a statement showing--

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
- (b) The particular work the employee was performing when injured; and
- (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion.”⁹

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim. Since the Board’s jurisdiction in a case is limited to reviewing that evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to the issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter, which was properly submitted to OWCP prior to the issuance of the final decision, be addressed by OWCP.¹⁰

ANALYSIS

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

OWCP denied appellant’s traumatic injury claim, by decision dated November 15, 2017, finding that she had not established that her alleged injury occurred in the performance of duty. It specifically noted that she had not responded to its September 25, 2017 development letter which requested that she submit additional evidence necessary to establish her claim. The record reveals, however, that appellant did provide additional factual information by letter dated and received by OWCP on November 6, 2017. OWCP clearly did not consider that information when it issued its November 15, 2017 decision denying her claim. The Board has held that evidence received by OWCP before it issues its decision must be reviewed and considered.¹¹ This case will, therefore, be remanded for OWCP to consider all of the evidence of record to determine whether appellant’s alleged injury occurred in the performance of duty. Following this and any necessary further development, OWCP shall issue a *de novo* decision.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); see also *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

¹⁰ *B.N.*, Docket No. 17-0787 (issued July 6, 2018); *S.P.*, Docket No. 16-0535 (issued March 23, 2016); *William A. Couch*, 41 ECAB 548 (1990).

¹¹ *Yvette N. Davis*, 55 ECAB 475 (2004) (Possession by OWCP of properly submitted evidence required consideration of that evidence by OWCP); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review and consider evidence even if received the same day as the decision denying appellant’s claim).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: January 2, 2019
Washington, D.C.

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