United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 19-0050**
	)	**Issued: June 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Opa-Locka, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 9, 2018 appellant filed a timely appeal from a June 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on May 31, 2017, as alleged.

[1] The Board notes that, following the June 21, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 1, 2017 appellant, then a 49-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging on May 31, 2017 at 3:35 a.m. when she entered the employing establishment building her knees gave way and she fell on the floor while in the performance of duty. She attempted to stop her fall unsuccessfully. Appellant alleged injuries to her whole body, head, wrists, hips, shoulder, and lower back. She noted that she had a previous OWCP claim for both of her knees. Appellant provided a May 31, 2017 statement narrative describing the same events.

On the reverse side of the claim form appellant's supervisor, F.C., indicated that appellant's regular work hours were from 4:30 a.m. until 1:30 p.m. He indicated that he was not aware that appellant sustained an injury on May 31, 2017 as appellant did not report the incident to him verbally. F.C. also disagreed with appellant's version of events as she did not appear physically different from any other normal workday on May 31, 2017.

In a letter dated June 12, 2017, the employing establishment challenged appellant's claim, noting that she had an occupational disease claim dated May 20, 2016, which OWCP accepted for bilateral knee bursitis. It suggested that appellant's claim should be considered as a consequential injury of her May 20, 2016 occupational disease claim. The employing establishment also noted that there were no witnesses to appellant's fall.

On June 1, 2017 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16). On June 1, 2017 Dr. Fausto P. Castillo, an internist, completed this form and noted that both knees gave way causing her to fall. He diagnosed acute pain. Dr. Castillo checked the box marked "yes" that he believed appellant's condition was caused by her employment activity as her knees collapsed and she fell. He also completed June 1 and 15, and July 13, 2017 duty status reports (Form CA-17) and diagnosed acute severe sprain of the bilateral wrists, cervical and lumbar spines, bilateral shoulders, and bilateral hips.

In a June 21, 2017 statement, the employing establishment noted that on May 31 and June 1, 2017 appellant reported for work. Appellant reported her injury at 1:20 p.m. on June 1, 2017.

In a June 22, 2017 development letter, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It requested that she complete a questionnaire and afforded her 30 days for a response.

On July 10, 2017 appellant completed the questionnaire and noted that she remembered walking into the employing establishment building and her knees suddenly buckling. She tried to catch herself, but continued to fall. After a few hours, appellant developed body aches, headache, as well as pain in her shoulders, wrists, and hips. She noted that she fell and struck the floor, but could not recall if she struck any objects. Appellant denied a condition that would cause her to faint or become dizzy.

By decision dated July 26, 2017, OWCP denied appellant's traumatic injury claim finding that she had not established a causal relationship between her diagnosed condition and her accepted employment incident.

On October 4, 2017 appellant disagreed with the July 26, 2017 decision and requested reconsideration. She noted that OWCP had accepted bilateral knee conditions in OWCP File No. xxxxxx135. Appellant alleged that she was forced to work beyond her restrictions provided in OWCP File No. xxxxxx135, including constant standing and walking 8 to 10 hours a day. She indicated that her continued work caused her knees to swell, hurt, and buckle on occasion. Appellant asserted, "By being force[d] to continually work in th[is] manner after my injury was diagnosed, caused my injury to worsen, thus aggravating my bilateral knee injuries consequently causing me new injuries to my wrist, shoulders, and hip from my knees buckling causing my fall."

On June 1, and 13, 2017 Dr. Castillo diagnosed acute lumbar sprain, bilateral hip strain, and strains of the wrists and shoulders. He opined that these conditions were work-related injuries. Dr. Castillo listed appellant's date of injury as May 31, 2017. He examined appellant on August 11, September 14, October 12, and November 9, 2017.

In a narrative report dated June 1, 2017, Dr. Castillo described appellant's employment incident on May 31, 2017 as occurring while walking into the employing establishment. He noted appellant's knees weakened causing her to fall to the ground. Dr. Castillo reported that appellant tried to break her fall, but impacted the ground. He found that she landed mostly on her wrists bilaterally, her shoulders, her head, and her knees. Dr. Castillo diagnosed sprain of the lumbar spine and pelvis, radiculopathy of the lumbar spine, traumatic arthropathy of the bilateral shoulders, sprain of the bilateral wrists, and effusion of the knees. He opined that appellant's fall on the concrete employing establishment floor resulted in these diagnosed conditions. On November 9, 2017 Dr. Castillo repeated his findings and conclusions.

By decision dated January 5, 2018, OWCP denied modification of the July 26, 2017 decision. It found that Dr. Castillo's reports were not well rationalized and did not establish causal relationship between her diagnosed conditions and her employment injury.

On June 1, 2018 appellant requested reconsideration of the January 5, 2018 decision and submitted additional medical evidence from Dr. Castillo. Dr. Castillo examined appellant on January 17, February 23, and May 1, 2018 repeating his diagnoses and conclusions. In a report dated May 31, 2018, he repeated appellant's history of walking in the employing establishment when her knees buckled causing her to fall to the floor. Dr. Castillo diagnosed right wrist sprain, lumbar and pelvis sprains, pain, weakness, and shoulder lesions. He opined, "It is my firm and medically certain opinion the patient's exact traumatic conditions [were] caused by … the sudden fall injury which has caused both muscle skeletal injuries and aggravations from performing her postal duties." Dr. Castillo concluded that appellant's medical conditions were caused by her May 31, 2017 injury.

By decision dated June 21, 2018, OWCP denied appellant's traumatic injury claim finding that she had not established fact of injury.

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 timely filed within the applicable

time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5] Whether an injury occurs in the performance of duty is a preliminary issue addressed before the merits of the claim are adjudicated.[6]

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[7] The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[8] In the course of employment pertains to the work setting, locale, and time of injury, whereas arising out of the employment encompasses not only the work setting, but also the requirement that an employment factor caused the injury.[9]

To arise 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 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 her employment or engaged in doing something incidental thereto.[10] As to the phrase in the course of employment, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours or at lunch time, are compensable.[11]

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[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

[7] 5 U.S.C. § 8102(a); *R.K.*, Docket No. 18-1269 (issued February 15, 2019); *J.K.*, Docket No. 17-0756 (issued July 11, 2018).

[8] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers compensation law. *R.K., id.; J.K., id.*; *Bernard D. Blum*, 1 ECAB 1 (1947).

[9] *See R.K., id.; L.P.*, Docket No. 17-1031 (issued January 5, 2018).

[10] *R.K., id.; T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *R.K., id.; L.P., supra* note 9; *Narbik A. Karamian*, 40 ECAB 617, 618 (1989). The Board has also applied this general rule of workers compensation law in circumstances where the employee was on an authorized break. *See Eileen R. Gibbons*, 52 ECAB 209 (2001).

ANALYSIS

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

As noted above, the Board has held that whether an injury occurs in the performance of duty is a preliminary issue addressed before the merits of the claim are adjudicated.[12]

Appellant alleged on May 31, 2017 at 3:35 a.m. she entered the employing establishment building and she fell on the floor while in the performance of duty. The factors considered in determining whether an employee arriving at work is in the performance of duty are whether the injury occurred on the employing establishment's premises, the time interval before the work shift, and the activity at the time of the injury.[13] Appellant has established that she was injured on the employing establishment's premises.

Appellant indicated that she fell at 3:35 a.m. Appellant's supervisor reported that her regular work hours were from 4:30 a.m. until 1:30 p.m. Thus, her employment incident occurred 55 minutes before her work shift began at 4:30 a.m. In this case, however, OWCP failed to address and develop the issue of whether appellant was in the performance of duty at the time of her injury. It did not ask either appellant or the employing establishment to explain the purpose for her presence on the employing establishment premises 55 minutes before the start of her work shift.

OWCP's procedures provide that it should obtain relevant information from an official superior to determine why an employee was on the premises for more than "reasonable interval" before the start of his or her work shift.[14] Its procedures further provide that if the supervisor is unaware of why the employee was on the premises, OWCP should seek this information from coworkers and procure a statement from the injured employee.[15] OWCP, however, failed to request or obtain a statement from the employing establishment or appellant specifically addressing the question of why she was on the employing establishment premises 55 minutes before the start of her work shift.

The Board finds that OWCP did not sufficiently develop the evidence regarding whether appellant was properly on the premises of the employing establishment at the time of injury such that she should be considered in the performance of duty.

On remand OWCP should obtain clarifying information from the employing establishment and determine whether appellant was on the employing establishment premises approximately 55 minutes prior to her work shift in the furtherance of her master's business and with its knowledge

[12] *Supra* note 6.

[13] *E.V.*, Docket No. 16-1356 (issued December 6, 2016).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4.d (August 1992).

[15] *Id.*

or benefit.[16] Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.[17]

CONCLUSION

The Board finds this case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2018 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision of the Board.

Issued: June 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[16] The Board notes that, if OWCP finds appellant was in the performance of duty at the time of her May 31, 2017 employment injury in accordance with its procedures, OWCP should combine the current claim with OWCP File No. xxxxxx135, her previous bilateral knee claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8.c. (February 2000).

[17] The Board notes that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work 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)