

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on December 20, 2021, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 23, 2021 appellant, then a 51-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2021 at 6:30 a.m. she sustained injury when she fell in the shower at her hotel while on travel status in Paris, France, in the performance of duty. She indicated that her left leg was behind her rear when she fell on the slick shower floor and that, due to the fall, her left knee became swollen and could not bear her weight when she walked. Appellant did not stop work. On the reverse side of the claim form, appellant's immediate supervisor acknowledged that appellant was injured in the performance of duty.

Appellant submitted a January 6, 2022 report from Dr. George M. Ballantyne, a Board-certified orthopedic surgeon, who indicated that appellant presented for evaluation of left knee pain, which began on December 20, 2021, when she slipped and fell in the shower while on a business trip to Paris. Dr. Ballantyne advised that, upon physical examination, appellant exhibited tenderness to palpation in the medial joint line of the left knee. Appellant had pain upon extension and valgus motions of the left knee, the valgus test was positive, and the extension and flexion motions of the left knee were abnormal. Dr. Ballantyne diagnosed instability of the left knee joint and injury of the left knee, initial encounter.

In an attending physician's report (Form CA-20) dated February 1, 2022, Dr. Ballantyne listed the history of the December 20, 2021 injury as "slip [and] fall in shower while on business in Paris" and diagnosed low-grade injury of the anterior cruciate ligament (ACL) of the left knee per magnetic resonance imaging (MRI) scan.³ He checked a box marked "Yes" to indicate that the diagnosed condition was causally related to the reported employment activity. Dr. Ballantyne indicated that appellant was able to resume light-duty work on February 1, 2022.

On February 1, 2022 Dr. Ballantyne completed a form report, which delineated appellant's work restrictions. He also completed a work status report of even date which indicated that appellant could perform sedentary work with limitations on squatting, kneeling, climbing stairs, and working on ladders, scaffolds or at heights.

In a February 16, 2022 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the necessary evidence.

³ The case record contains a January 19, 2022 MRI scan of the left knee, which contains an impression of low-grade ACL injury.

In response, appellant submitted a February 17, 2022 report from Hyoyoung Jang, a physical therapist, who described her therapy session on that date.

By decision dated March 21, 2022, OWCP denied appellant's claim for a December 20, 2021 traumatic injury. It determined that she had established that the December 20, 2021 fall occurred as alleged, and that a medical condition had been diagnosed in connection with the accepted incident, but further found that the element of performance of duty had not been met. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 22, 2022 appellant requested reconsideration of the March 21, 2022 decision. She submitted an unsigned document from her December 20, 2021 visit to a hospital in Paris. In a December 30, 2021 report, Dr. Ballantyne indicated that appellant could return to work for eight hours per day using a computer and answering telephone calls while in a seated position. Appellant also submitted March 1, 9, and 21, 2022 reports from Ms. Jang who described appellant's therapy sessions on those dates.

Appellant submitted an unsigned authorization for examination and/or treatment (Form CA-16) dated January 6, 2022, which listed a diagnosis of left knee muscle sprain.

Appellant submitted a time and attendance form, which contains an entry showing that on December 20, 2021 she worked from 8:00 a.m. to 4:00 p.m. A timecard document shows that she received pay for eight hours on December 29, 2021.

By decision dated April 26, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including 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

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly

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).

occurred at the time and place, and in the manner alleged.⁶ The second component is whether the employment incident caused a personal injury.⁷ Rationalized medical opinion evidence is required to establish causal relationship.⁸

The general rule regarding coverage of employees on travel duty status or on temporary duty assignments is that an employee whose work entails travel away from the employer's premises is generally considered to be within the course of his or her employment continuously during the trip, except when there is a distinct departure on a personal errand. Thus, injuries flowing from sleeping in hotels or eating in restaurants away from home are usually compensable.⁹

The Board has similarly recognized that FECA covers an employee 24 hours a day when the employee is on travel duty status and engaged in activities essential or incidental to such duties.¹⁰ When the employee, however, deviates from the normal incidents of her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of FECA and any injury occurring during these deviations is not compensable.¹¹

ANALYSIS

The Board finds that appellant has established a traumatic incident in the performance of duty on December 20, 2021, as alleged.

As noted above, FECA covers an employee 24 hours a day when the employee is on travel duty status and engaged in activities essential or incidental to such duties, unless the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer.¹² In the present case, appellant's supervisor acknowledged that appellant was on travel-duty status and therefore in the performance of duty on December 20, 2021 when she fell in the shower at her hotel in Paris. As appellant's showering at her hotel on December 20, 2021 was reasonably incidental to the duties of the temporary assignment contemplated by the employer, the Board finds that appellant was in the performance of duty. Therefore, the case shall be remanded to OWCP for further development, to determine whether she sustained an injury causally related to the accepted December 20, 2021 employment incident.

⁶ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

⁹ *S.T.*, Docket No. 16-1710 (issued September 27, 2017); *B.B.*, Docket No. 14-2000 (issued July 9, 2015).

¹⁰ *See K.R.*, Docket No. 21-0308 (issued May 16, 2022); *S.B.*, Docket No. 10-842 (issued December 9, 2010). *See also A.W.*, 59 ECAB 593 (2008).

¹¹ *See T.C.*, Docket No. 16-1070 (issued January 24, 2017); *Ann P. Drennan*, 47 ECAB 750 (1996).

¹² *See id.*

After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that appellant has established a traumatic incident in the performance of duty on December 20, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.¹⁴

Issued: December 9, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ In light of the Board's disposition of the first issue, the second issue is rendered moot.

¹⁴ A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. 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. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).