United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
and	)	**Docket No. 21-0538**
	)	**Issued: July 25, 2022**
DEPARTMENT OF THE ARMY, SIERRA ARMY DEPOT, Herlong, CA, Employer	)	

Appearances:
Victor A. Walker, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 25, 2021 appellant, through his representative, filed a timely appeal from a February 5, 2021 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 his burden of proof to establish an injury in the performance of duty on December 20, 2017, as alleged.

FACTUAL HISTORY

On January 2, 2018 appellant, then a 30-year-old woodworker, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2017 at approximately 2:00 p.m. his right index finger was amputated when he used a wood jointer while in the performance of duty. He stopped work on December 20, 2017 and returned to work on December 26, 2017. The employing establishment contended that appellant was not in the performance of duty at the time of injury as he was "working on a personal project during a scheduled break using a jointer he was not trained/certified/authorized to use with improper PPE [personal protective equipment]." It attributed his injury to willful misconduct, contending that he had violated safety protocol, used equipment without appropriate training, and tried to conceal his injury. The employing establishment indicated that appellant had claimed he was not wearing gloves while using the jointer but that it had found a piece of glove with "his finger tissue."

A position description for wood working (blocker & bracer) indicates that the duties included constructing and improvising special jigs and required skill "using a variety of wood-working machines (for example all kinds of saws, drill presses, drills, mortisers, tenoners, and jointers)…."

In a development letter dated January 18, 2018, OWCP requested that appellant submit additional evidence in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond.

In a statement dated December 21, 2017, G.P., a shop leader, related that on December 20, 2017 at 9:15 a.m. he witnessed appellant cutting wood while wearing gloves. He told him to take the gloves off. G.P. described finding appellant at 2:14 p.m. with blood coming down his arm. He indicated that he was in shock and had to be prevented from leaving. Appellant advised G.P. that he had injured himself using a jointer. G.P. related that he believed that appellant was wearing gloves while using the jointer because he found "pieces of the shred glove that came out of the dust collector." He asserted that appellant was not supposed to be operating it as he had not been trained or certified on that piece of equipment. G.P. maintained that appellant "knew he was not authorized to operate the jointer; [and] he knew it was extremely dangerous and a safety violation to operate any saw wearing gloves. In fact, he hid the glove on his injured hand so well, we have been unable to find it. But, as stated above, we found glove residue on the saw."

E.G., a shop leader, in a statement dated December 21, 2017, related that on December 18, 2017 he witnessed appellant using a table saw while wearing gloves. He told appellant that he was in a no glove area. Appellant argued with E.G. before removing his gloves. On December 20, 2017 appellant told him he had injured his finger on the jointer. E.G. related, "It was later discovered that [appellant] was wearing gloves as a piece of his glove and pieces of his finger were

found in the dust collector." He related that there were no other incidents of appellant not following safety procedures and that with his experience he should have known not to wear gloves.

In a memorandum dated January 22, 2018, E.G. and G.P. advised that a jointer was used to square edges of lumber. They related that appellant was in a "NO GLOVE" area at the time of the incident and had been previously warned twice about wearing gloves. E.G. and G.P. maintained that on December 20, 2017 at 2:00 p.m., during a break, appellant had used the jointer machine to push through a "very small piece of lumber, measuring a mere 3¼ x 4¼ x ¾," which was under the size permitted for the machine. They related, "He did this during regularly scheduled break time, on a piece of equipment he had not been trained to use, without permission, on a personal project, and was not using the mandatory push stick or push shoe." E.G. and G.P. described appellant's actions after his injury, noting that he did not report the accident for seven to eight minutes. When the jointer was disassembled, they located the tip of a glove and pieces of the amputated finger. E.G. and G.P. advised that appellant had not been "formally trained on this piece of equipment and was not authorized to be operating it."

Appellant's safety and health record from the employing establishment indicated that he had been briefed on safety training on various pieces of equipment, including the jointer. On October 3, 2016 E.G. and G.P. verified that he had been trained on the information contained in his safety training records and understood the guidelines in the job hazard analysis binder.

On February 5, 2018 the employing establishment indicated that on the date of the incident appellant "was assigned to the production of [four] door crates, which consisted of attaching [four] sides/walls to a wooden crate using lag bolts, pneumatic drills, pneumatic impact wrenches, and limited nailing using pneumatic nail guns." It advised that he had amputated his right index finger past the first joint using a jointer on December 20, 2017 at 2:00 p.m. trying to shear wood measuring 3¼" by 4¼" by ¾" without using a push stick or shoe and while wearing gloves. After the incident, appellant went to the restroom and to his locker, where he took a picture of his amputated finger. He was transported by ambulance to a hospital. Appellant told G.P. and E.G. that he was not wearing gloves, but a piece of a glove was found in the dust collector of the jointer. The employing establishment asserted that appellant had knowingly used dangerous equipment without his supervisor's consent and without proper training. It maintained that he was "outside the scope of his assigned duties, during a time that all other employee [s] were on a regularly scheduled break, and in the commission of working on a personal project." The employing establishment challenged appellant's claim based on willful misconduct and argued that he was not in the performance of duty at the time the incident had occurred.

In a February 7, 2018 statement, the employing establishment related that G.P. had assigned appellant to work on four-door crates but that instead he had worked on a personal project.[3] It advised that he was not authorized or trained to use the jointer and was the only person in the area as the rest were on break or in the shop office. The employing establishment related, "The jointer is used on rare occasions for special projects only and not for usual/customary production work. Very few employees are allowed access to the jointer due to the dangerous nature of the machine. The few that are allowed access are closely monitored by either the

[3] An assignment sheet indicated that appellant's assignment for December 20, 2017 was four door stick wood.

supervisor or one of the work leaders." It advised that appellant was currently facing discipline for failing to observe the rules and insubordination. The employing establishment indicated that employees had scheduled breaks at 9:00 a.m. and 2:00 p.m. and lunch at 11:30 a.m.

The record contains statements from coworkers describing the events of December 20, 2017. T.S., a coworker, noted that "[m]aking and using jigs are part of our operating procedures. We use an assortment of jigs depending on what crate plans we are following. I did not agree with [appellant's] choice of machinery to craft a jig, but in the past he has used the jointer with no problems."

In a February 17, 2018 response to OWCP's development letter, appellant related at 1:45 p.m. on December 20, 2017 he had finished a task that he was working on with a coworker and asked E.G. what he should do next.[4] Appellant related, "He told me to build component parts. I chose to do ends because they are the easiest to do and we had just finished the stick wood cut so I knew we had everything to do them. I left the area, got a few tools out, [but] I could [not] find a 2.25-inch jib, so I had to make the jig I needed to work on the assigned project.... I had conceptualized an idea for the jig and began working on it...." Appellant described his injury. He indicated that he knew that if he reported his injury he would be retaliated against because he had seen how people were treated after minor injuries. Appellant asserted that individuals who reported injuries were "harassed and bullied" because it affected safety records and bonuses. Regarding making the jib, he related:

> "Participating in this activity was not mandatory but I needed the jig to complete the project that was given to me which was mandatory. What persuaded me to make the jig is the fact that the project I was given to work on required me to build the end walls of a crate. Without the jig I would have had to have made 50 separate measurements as there were 25 pieces that would have to be measured at each end, so making the job prevented me from having to make repetitive measurements and made the project easier to complete."

Appellant maintained that he was authorized to use the jointer saw and that he had "used every machine in that shop." He denied working on a personal project and questioned why he would need a 2.25-inch jig for anything other than building ends of four-door crates. Appellant noted that workers were expected to complete assigned projects without supervision and that he did not need to ask for authorization because he and his coworkers had been trained on the equipment. He related that he "did not violate any rules or regulations by using the machine. I used the machine because I was trained on that equipment."

In a February 17, 2018 statement, appellant's representative asserted that records established that he had been trained on the jointer on October 3, 2016 and that G.P. and E.G. had "signed off on and acknowledged that the claimant was trained on all of the equipment that is listed

[4] A certificate of achievement dated October 3, 2016 indicated that appellant had completed power tool safety training for woodworking at the employing establishment.

on page two of the training records."[5] He argued that the employing establishment had filed a false report. Counsel asserted that appellant was not working on a personal project but instead was "making a jig to finish an assigned project" and thus "engaged in something that was incidental to fulfilling duties of his employment." He related:

> "The claimant was making a jig, so he would not have to do repetitive measurements for the assigned project he was working on. If the employing agency wants to argue or contend that this was a personal project because it was [not] absolutely necessary for the claimant to use the jig, it would fall under him needing the jig for personal convenience to complete the assigned task."

Counsel asserted that appellant was not on a break but that even if he was the injury remained compensable as he was working on something incidental to his employment duties.

By decision dated February 21, 2018, OWCP denied appellant's traumatic injury claim. It found that he had not established that he was in the performance of duty at the time of the December 20, 2017 incident.

On March 8, 2018 J.P., a coworker, related that the employing establishment had placed a large "no glove area" sign in the workspace after appellant's December 20, 2017 injury. He related that prior to that date "the area in question was never known to be a 'no glove area.'" L.H., B.S., A.S., V.C., and J.H., coworkers, submitted similar statements of the same date.

On March 14 and May 16, 2018 the employing establishment issued appellant a notice of proposed removal. It found that he had violated safety rules or regulations when he operated a jointer on December 20, 2017 while wearing gloves and without the proper training or certification. The employing establishment noted that appellant had previously been warned not to wear gloves in the area.

In a May 31, 2018 response to the proposed removal, appellant related that he was not wearing gloves at the time of the incident and that the area had not been designated a "no gloves area" prior to his accident. He further contended that he was not on break as it had "happened just before everyone started leaving before break." Appellant advised that coworkers could leave up to 10 minutes early for breaks.

In a statement dated March 12, 2018, F.R., a coworker, related that on December 18, 2017 he was wearing gloves while using the table saw. E.G. told him that it was not safe to wear gloves using the saw and then walked away. F.R. advised that he had never heard the rule until then and had not previously been told not to wear gloves. He asserted that there were no official guidelines or posted warning about wearing gloves. F.R. related, "This area was never known as a 'no gloves area' prior to [appellant's] accident. E.G. and G.P. were responsible for [appellant's] training, which is nonexistent for everyone. I believe they are trying to cover up what happened by placing 'no glove area' signs about the tool he was injured on and claiming they were there prior."

[5] In a supplemental statement dated February 20, 2018, counsel clarified that appellant had told the safety coordinator that he was not using a push stick at the time the incident occurred.

On September 13, 2018 appellant requested reconsideration. He asserted that management had not kept records of his job training. Appellant related, "Claiming I was not authorized or trained to use this piece of machinery is ridiculous considering the fact that using a jointer is part of the job description which was provided to OWCP. I was injured on a jointer while crafting a jig, a task which is directly stated in my job description. Loss of fingers is also directly stated in the job description as a potential hazard." He noted that D.C. was his supervisor and not G.P. Appellant denied every acting defiant or irrational. He asserted that E.G. had described telling him to wear gloves prior to his accident but maintained that this incident had actually occurred with F.P., another woodworker. Appellant noted that there was "no such thing as a no gloves area in [the] box shop prior to my accident. Had I been wearing gloves I would be missing a lot more than just part of my finger." Appellant related that G.P. even told people that it was good he had not been wearing gloves when describing his accident. He noted that management claimed to have found glove fabric. Appellant related, "Initially it is claimed to have been found in the dust collector, a machine that it connected to [five] other machines include a shoot that trash is swept into daily. Later [E.G.] and [G.P.] chang[ed] the story to finding the fabric in the jointer itself." He asserted that the job hazard analysis was used to support his proposed removal but advised that it was a forgery and had not been submitted to OWCP.[6] Appellant noted that after the first proposed removal he had received an award for a process improvement plan. He asserted that management had failed to support its allegation that he was not trained or authorized to use the jointer. Appellant maintained that he was "never told that I was not trained enough to use a piece of equipment."

In a response dated October 22, 2018, the employing establishment discussed appellant's contention that E.G. had told another woodworker rather than appellant not to wear gloves.[7] It advised that this merely confirmed that the area was a 'no glove' zone. The employing establishment maintained that he had failed to explain why he did not use the push stick/shoe and claimed that safety personnel found a piece of glove in the dust collector.

On November 1, 2018 appellant's representative noted that management had not supported its allegations that appellant was counseled about wearing gloves or that it had found a glove with a finger piece inside.

By decision dated November 29, 2018, OWCP denied modification of its February 21, 2018 decision. It found that the evidence failed to establish that appellant had engaged in willful misconduct but again found that he was not in the performance of duty at the time the December 20, 2017 incident occurred. OWCP determined that the employing establishment had not established that he was wearing gloves at the time of his injury but found that he had failed to

[6] On April 20, 2018 appellant's representative requested a copy of his training records and the job hazard analysis for the equipment in the shop, and the work orders for the machine on which appellant was injured.

[7] On October 22, 2018 G.P. indicated that he was unaware that appellant had worn gloves at the time of his injury when he noted that his condition would have been worse if he was wearing gloves. He related, "After the meeting one of our shop employees came up to the safety personnel and myself and told us that [appellant] did have gloves on at the time of the accident. At this time the safety officers and I went out and opened the dust collector gate to find the piece of glove."

demonstrate that he was authorized to use a jointer. It also found that appellant was on break when the incident occurred and performing an unapproved activity.

On February 8, 2019 D.D., a coworker, indicated by use of his initials that he was told to use any machine. He advised that he had used the jointer but only for side projects, and did not need permission to use the machine until after appellant's accident. D.D. advised, "Prior to [appellant's] accident we were just given a project to do and it was our decision on what equipment we used, and this was even stated in our job description."

A.S., a coworker, advised on February 9, 2019 that she was told to use any equipment she felt comfortable using and had used the jointer "many times without any issue."

In a statement dated March 27, 2019, J.P. indicated that he often used the jointer and did not require permission but was instead told to "get on it and figure it out."

By letter dated June 25, 2019, OWCP requested additional information from appellant regarding whether he was working on a project assigned by the employing establishment at the time the incident occurred.

In a July 9, 2019 response, appellant's representative questioned why appellant's statement regarding the incident was not sufficient, noting that it had been consistent and had not been refuted by strong or persuasive evidence.[8]

On July 11, 2019 D.C., G.P., and E.G. maintained that appellant should not need to make a jig to construct the four door crate or run the piece of wood through the jointer to reduce its thickness.

On July 16, 2019 the employing establishment asserted that the jig appellant claimed to be making would not be useful for the assigned project given the dimensions. It advised that jigs were "constructed of full dimensional wood therefore plaining a 'jig' to make it thinner is not required." The employing establishment indicated that appellant worked in a temporary appointment that had expired.

By decision dated July 19, 2019, OWCP denied modification of its November 29, 2019 decision. It found that evidence failed to support appellant had been building a jig for crates at the time of the incident.

Thereafter, OWCP received a November 8, 2018 interrogatory response from D.C., a supervisor. He advised that appellant had received a proposed termination due to being warned twice not to wear gloves when operating a table saw. D.C. believed appellant was wearing gloves at the time of his accident.

In a sworn statement dated August 7, 2019, E.G. advised that he had not witnessed appellant's injury on December 20, 2017. He indicated that appellant had been certified on

[8] Effective May 19, 2018 appellant separated from the employing establishment as his temporary appointment ended.

October 3, 2016 to operate a jointer. E.G. asserted that various jigs were required to make a four door crate and provided the measurements for the jigs.

In a sworn statement of even date, G.P. maintained that appellant was certified to work all the machines in the shop.

On August 16, 2019 B.J., an attorney for the employing establishment, indicated that there was "no written policy that an employee required permission to use the jointer" and neither admitted nor denied that a "no glove" policy was only implemented after appellant's injury. B.J. generally denied that appellant was working on a jig for an assigned project.

In a statement dated May 5, 2020, J.P. related that he made jigs whenever he needed one to save time and that they were usually small. He indicated that 10 to 15 different jigs were required to build a four-door crate.

On May 17, 2020 A.S.[9] related that she and her coworkers were assigned general daily projects and manufactured hundreds of jigs in many shapes and sizes ranging in size from 2 to 12 inches. In a June 26, 2020 statement, D.D. advised that at least 10 jigs of all sizes, from 3 to 10 inches, would be used to build four-door crates and that they were usually small and made "out of two pieces of wood like the thinner ¾ inch blocks." D.D. asserted that he and his coworkers made one whenever it was needed.

On July 15, 2020 appellant, through his representative, requested reconsideration. The representative noted that OWCP changed the basis for the denial. He indicated that E.G. had verified that various jigs were required for the assigned project and had confirmed that appellant was certified on the machine, in contradiction to his prior assertion.

By decision dated February 6, 2021, OWCP denied modification of its July 19, 2019 decision. It found that appellant had not "definitively proved" that he was working on a jig for a four-door crate at the time of his injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[10] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[11] 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

[9] A.S. is also known by T.S.

[10] *Supra* note 2.

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

employment injury.[12] 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.[13]

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence for an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[14]

The Board has interpreted the phrase "sustained while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[15] The phrase "in the course of employment" encompasses the work setting, the locale, and time of injury. The phrase "arising out of the employment" encompasses not only the work setting, but also a causal concept with the requirement being that an employment factor caused the injury.[16] In addressing the issue, the Board has held that in the compensation field, to occur 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 his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with his or her employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[17] In deciding whether an injury is covered by FECA, the test is whether, under all circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.[18]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on December 20, 2017, as alleged.

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

[13] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *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).

[14] *See* 5 U.S.C. § 8102(a); *see J.N.*, Docket No. 19-0045 (issued June 3, 2019).

[15] *See M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

[16] *L.B.*, Docket No. 19-0765 (issued August 20, 2019); *G.R.*, Docket No. 16-0544 (issued June 15, 2017); *Cheryl Bowman*, 51 ECAB 519 (2000).

[17] *A.S.*, Docket No. 18-1381 (issued April 8, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

[18] *A.G.*, Docket No. 18-1560 (issued July 22, 2020); *J.C.*, Docket No. 17-0095 (issued November 3, 2017); *Mark Love*, 52 ECAB 490 (2001).

OWCP accepted, and the evidence supports, that appellant sustained an amputation of part of his right index finger on December 20, 2017 while on the premises of the employing establishment.

The employing establishment controverted the claim alleging an affirmative defense of willful misconduct. It asserted that appellant had not been trained or certified for use on the jointer and was wearing gloves in a "no glove area." The Board has defined willful misconduct as deliberate conduct involving premeditation, obstinacy, or intentional wrongdoing with the knowledge that it is likely to result in serious injury or conduct that is in wanton or reckless disregard of probable injurious consequences.[19] The allegation of willful misconduct is an affirmative defense which OWCP must invoke in the original adjudication of the claim and OWCP has the burden to prove such a defense.[20]

The Board finds that OWCP properly found that appellant had not engaged in willful misconduct. The employing establishment asserted that he had not been trained or certified to use the jointer, but this assertion was subsequently contradicted in statements made by E.G. and G.P. on August 7, 2019. Appellant's coworkers further maintained that the work location had not been designated a "no glove" area until after his accident.[21] Thus, OWCP properly found that the affirmative defense of willful misconduct had not been established.[22]

OWCP denied appellant's claim based on its finding that he had deviated from his employment at the time of the December 20, 2017 incident. Therefore, the issue is whether he was in the performance of duty at the time of the amputation of part of his right index finger or whether he had sufficiently deviated from his employment duties as to remove him from the protections of FECA.[23]

In determining whether an injury occurs in a place where the employee may reasonably be, or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the

[19] *M.D.*, Docket No. 19-0841 (issued December 2, 2020); *I.A.*, Docket No. 15-1913 (issued July 20, 2016).

[20] *See S.M.*, Docket No. 18-1574 (issued March 27, 2019); *see also Bruce Wright*, 43 ECAB 284, 295 (1991).

[21] Additionally, with respect to the affirmative defense of willful misconduct, OWCP's procedures provide: "Safety rules have been promulgated for the protection of the worker -- not the employer -- and, for this reason, simple negligent disregard of such rules is not enough to deprive a worker or the worker's dependents of any compensation rights. All employees are subject to the orders and directives of their employers in respect to what they may do, how they may do certain things, the place or places where they may work or go, or when they may or shall do certain things. Disobedience of such orders may destroy the right to compensation only if the disobedience is deliberate and intentional as distinguished from careless and heedless." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.14 (September 1995).

[22] *M.D.*, *supra* note 19.

[23] *See R.E.*, Docket No. 18-0515 (issued February 18, 2020) (when it has been established that an injury occurred after arrival on premises, OWCP must consider whether the injury occurred in the performance of duty).

employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities, unrelated to his or her employment.[24]

The Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was "aimed at reaching some specific personal objective."[25] The Board will look to the evidence presented within the record to determine whether appellant's actions furthered the employing establishment business.[26]

The Board finds that appellant was in the performance of duty at the time of the December 20, 2017 incident as it occurred at a time and place where appellant was reasonably expected to be while he was reasonably fulfilling his assigned employment duties.[27] The employing establishment advised that it had scheduled breaks at 9:00 a.m. and 2:00 p.m. While the employing establishment claimed that the incident occurred during a scheduled break, appellant alleged, and the evidence supports, that the accident occurred around 2:00 p.m., and that he had not yet begun his break.

Appellant asserted that at the time of his injury he was making a jig for an assigned project making four-door crates. He related that he did not have to make a jig but noted that without the jig he would have to make 50 separate measurements. Appellant submitted numerous statements from coworkers indicating that they routinely made jibs to complete projects, including making four-door crates. The employing establishment contended that he was working on a personal project based on the size jig he was constructing. However, it has not submitted any persuasive evidence supporting its allegation. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[28] The Board finds that the evidence does not establish that appellant's actions constituted a departure from his assigned duties and the Board thus finds that he was in the performance of duty at the time his right index finger was amputated on December 20, 2017. As it has been established that appellant was in the performance of duty, the medical evidence of record must be considered.[29]

Appellant submitted medical evidence describing his treatment subsequent to the December 20, 2017 employment incident. As OWCP has not yet evaluated the medical evidence to determine whether there is a causal relationship between the accepted employment incident and a diagnosed condition, the case will be remanded to OWCP. Upon remand it shall evaluate the medical evidence of record to determine any diagnosed conditions and disability resulting from

[24] *J.S.*, Docket No. 16-1057 (issued May 11, 2017); *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

[25] *A.P.*, Docket No. 18-0886 (issued November 16, 2018); *Rebecca LeMaster*, 50 ECAB 254 (1999).

[26] *A.G.*, Docket No. 18-1560 (issued July 22, 2020).

[27] *See M.D.*, *supra* note 19.

[28] *See A.C.*, Docket No. 18-1567 (issued April 9, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

[29] *A.G.*, *supra* note 26; *C.P.*, Docket No. 18-1741 (issued July 5, 2019).

the accepted December 20, 2017 employment incident. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[30]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on December 20, 2017, as alleged. The Board further finds that this case is not in posture for decision regarding whether appellant has established an injury causally related to the accepted December 20, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 25, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[30] *Id*.