

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
K.F., Appellant)	
)	
and)	Docket No. 22-0425
)	Issued: July 29, 2022
U.S. POSTAL SERVICE, POST OFFICE, Bedford Park, IL, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 28, 2022 appellant filed a timely appeal from an August 18, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on January 28, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 18, 2021 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.*

FACTUAL HISTORY

On February 6, 2021 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that at 5:58 p.m. on January 28, 2021 she sustained a left ankle sprain when she slipped on black ice on stairs while delivering mail in the performance of duty. On the reverse side of the claim form her supervisor noted her regular work hours as 8:30 a.m. to 4:30 p.m. and acknowledged that appellant was injured in the performance of duty.

In a note dated January 28, 2021, appellant related that, at 5:58 p.m. on that date, she slipped on ice while delivering to a home. As she descended stairs, she slipped and landed on her left ankle incorrectly.

In a medical report dated January 29, 2021, Dr. Maria Vlahos, Board-certified in occupational medicine, noted that appellant was seen that day after appellant slipped on a step and rolled her ankle on the previous day. Dr. Vlahos diagnosed left ankle sprain. On an accompanying duty status report (Form CA-17), she repeated her diagnosis and advised that appellant was released to return to work that day with restrictions.

On March 4, 2021 the employing establishment offered appellant a modified limited-duty assignment due to her employment injury.

On July 8, 2021 appellant filed claims for compensation (Form CA-7) for disability from work during the period June 5 through July 2, 2021.

In a development letter dated July 12, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a factual questionnaire for her completion.

In a July 12, 2021 response, appellant stated that she was injured on January 28, 2021 while she was at work, delivering mail. She also indicated that her ankle injury had not healed and may require surgery.

By decision dated August 18, 2021, OWCP accepted that the January 28, 2021 incident occurred as alleged and that appellant sustained diagnosed medical conditions, but denied her claim, finding that the claimed incident did not occur in the performance of duty, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

related to the employment injury.⁵ 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.⁶

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.”⁷ To arise in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in the master’s business; (2) at a place when 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.⁸ In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.⁹

ANALYSIS

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

Whether an injury occurs in the performance of duty is a preliminary issue to be addressed before the remaining merits of the claim are adjudicated.¹⁰ Appellant indicated in her February 10, 2021 claim form that, while delivering to a home, she injured her left ankle slipping on icy stairs at 5:58 p.m. on January 28, 2021 while in the performance of duty. She described the same circumstances in a statement dated January 28, 2021. On the reverse side of the claim form, appellant’s supervisor noted her regular work hours as 8:30 a.m. to 4:30 p.m.; however, she acknowledged that appellant was injured in the performance of duty. The Board finds that OWCP has not adequately developed this aspect of appellant’s claim.

In a July 12, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advise her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP did not, however, send a development letter to the

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *C.L.*, Docket No. 19-1985 (issued May 12, 2020); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

⁸ *S.V.*, Docket No. 18-1299 (issued November 5, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

⁹ *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *M.W.*, Docket No. 15-0474 (issued September 20, 2016); *Mark Love*, 52 ECAB 490 (2001).

¹⁰ *S.T.*, Docket No. 20-0388 (issued September 16, 2020); *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

employing establishment asking it to provide further specific information about the factual aspects of appellant's claim.

OWCP's procedures note that, by the nature of their work, letter carriers are on the premises of the employer for only part of each working day and it follows that many of their injuries are sustained away from the industrial premises.¹¹ The procedures advise that "it is neither necessary nor practicable to develop the evidence in all cases as fully as is required for the injuries sustained by other kinds of off-premises workers. No additional evidence is needed if the [claims examiner] can reasonably conclude from the evidence on the notice of injury combined with other material in the file that the employee was performing assigned duties when the injury occurred."¹² OWCP further notes that "If it appears questionable that the employee was in the course of employment when injured, the official superior should be asked to submit: (a) A statement with full explanation showing specifically whether the employee was in the performance of duty when the injury occurred, and whether at the time of injury the employee had deviated from the proper route for personal reasons; and (b) A diagram showing the location of the accident in relation to the route of travel the employee was to follow to perform the assigned duty."¹³

As OWCP failed to request information from the employing establishment as required under its procedures, the Board will remand the case for OWCP to further develop the question of whether appellant was in the performance of duty when injured on January 28, 2021. On remand it shall obtain all relevant information from the employing establishment necessary to determine whether she was injured in the performance of duty at 5:58 p.m. on January 28, 2021 while delivering to a home. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(c).

¹² *Id.*

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 29, 2022
Washington, DC

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

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

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