

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

D.E., Appellant)

and)

DEPARTMENT OF LABOR, OFFICE OF)
WORKERS' COMPENSATION PROGRAMS,)
New York, NY, Employer)

**Docket No. 21-0988
Issued: June 2, 2022**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2021 appellant, through counsel, filed a timely appeal from a May 7, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 her burden of proof to establish a traumatic injury in the performance of duty on October 30, 2020, as alleged.

FACTUAL HISTORY

On November 3, 2020 appellant, then a 41-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2020 she sprained her right arm when she caught her monitor as it slid off of her worktable while teleworking in the performance of duty. On the reverse side of the claim form signed by B.D., a supervisory claims examiner, contended that appellant was not injured in the performance of duty as she was “moving furniture and not performing official duties at the time of incident.” Appellant stopped work on October 30, 2020.

In support of her claim, appellant submitted an urgent care note dated October 30, 2020, which contained an illegible signature. It stated that she sustained a sprain/tear to her right arm when she tried to catch a computer.

In a narrative a statement dated November 2, 2020, appellant explained that she had a scheduled meeting with her supervisor on October 30, 2020. In preparation for the meeting, she moved her worktable “so the only background [her] manager could see [was her] window curtains.” When pushing her worktable back to the middle of the room following the meeting, appellant’s monitor slid and she felt a pop in her arm as she tried to catch it. She stated that she went to urgent care on the date of her injury.

In a development letter November 5, 2020, OWCP advised appellant that additional evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant’s allegations. It afforded both parties 30 days to respond.

OWCP received a magnetic resonance imaging scan report of appellant’s right shoulder dated November 6, 2020 from Dr. MaryAnn Peterson, a Board-certified diagnostic radiologist. Dr. Peterson diagnosed right rotator cuff tendinosis with a full-thickness tear.

In a letter dated November 9, 2020, M.C., also a supervisory claims examiner, responded to OWCP’s development questionnaire. She attested that she had a meeting with appellant on October 30, 2020 at 11:00 a.m. while appellant was teleworking. M.C. related that appellant was not required to move her worktable as part of her work meetings and that she had no knowledge that appellant moved her table.

OWCP received a medical report dated November 9, 2020 from Dr. Sheref Hassan, a Board-certified orthopedic surgeon. Dr. Hassan related that appellant sustained a right shoulder injury, which occurred at work on October 30, 2020 when she reached for a falling monitor. He diagnosed a right shoulder acute traumatic full-thickness rotator cuff tear, which was caused by

reaching out to grab the falling monitor at work. Dr. Hassan also provided a work excuse for appellant.

Appellant submitted a response to OWCP's development questionnaire on November 11, 2020. She attested that she moved her worktable daily to set up for work. Prior to the meeting with her manager, appellant moved the table in front of a window so that only her window curtains would be seen. She stated that she was not on her lunch break when the accident occurred. Appellant also submitted a diagram of her room, indicating that her workspace was in a bedroom with her worktable located toward the middle of the room.

OWCP also received a copy of appellant's telework agreement dated December 30, 2019.

By decision dated December 7, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that an injury occurred in the performance of duty on October 30, 2020, as alleged.

On December 10, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a medical report dated February 17, 2021, Dr. Hassan related that appellant was seen for a follow-up appointment. He related diagnoses of right rotator cuff strain, right shoulder impingement syndrome, right shoulder bursitis, and adhesive capsulitis of the right shoulder. Dr. Hassan indicated that the eccentric loading of appellant's shoulder as she reached for the falling monitor was the mechanism of injury.

By decision dated May 7, 2021, OWCP's hearing representative affirmed the December 7, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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 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

³ *Id.*

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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); *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).

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 The phrase “in the course of employment” is recognized as related 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: (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 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 appellant has met her burden of proof to establish a traumatic incident in the performance of duty on October 30, 2020, as alleged.

The record reveals that appellant had a scheduled meeting with her supervisor while teleworking on October 30, 2020. In preparation, she moved her worktable so that only her window curtains would be seen in the background. When pushing her worktable back to the middle of the room following the meeting, her monitor slid and she felt a pop in her arm as she tried to catch it.

OWCP’s procedures provide that ordinarily, the protections of FECA do 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, it is critical to ascertain whether at the time of injury the employee was in fact doing something for the benefit of the employer.¹⁰

Under the facts of this case, appellant’s alleged injury occurred while she was attempting to catch her computer monitor that had slid off of her worktable, when she was moving it back to the middle of the room at the conclusion of her meeting with her supervisor. She was, therefore, engaged in an activity essential to her employment or reasonably incidental to the duties that she

⁷ *K.W.*, Docket No. 20-1237 (issued September 24, 2021); *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

⁸ *See A.S.*, Docket No. 18-1381 (issued April 8, 2019); *D.L.*, 58 ECAB 667 (2007); *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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *see also P.B.*, Docket No. 21-0667 (issued March 3, 2022); *M.T.*, Docket No. 16-0927 (issued February 13, 2017); *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

was hired to perform.¹¹ The Board thus finds that appellant was injured while in the performance of duty.

The Board will, therefore, remand the case for consideration of the medical evidence on the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted October 30, 2020 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on October 30, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2017 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 2, 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

¹¹ *P.B., id.*