United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, JOHN COCHRAN VA MEDICAL CENTER, St. Louis, MO, Employer	)	**Docket No. 22-0108** **Issued: September 1, 2022**

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 1, 2021 appellant, through counsel, filed a timely appeal from an August 24, 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 her burden of proof to establish that she sustained an injury in the performance of duty on February 14, 2019, as alleged.

FACTUAL HISTORY

On February 20, 2019 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that at 4:30 p.m. on February 14, 2019 she sustained injury to her hands and knees when she fell to the floor at the employing establishment while in the performance of duty. She asserted that she was speaking with J.L., an employing establishment human resource official, and then pushed a heavy door open, tripped over a metal door jamb, and fell forward such that she landed on her hands and knees. Appellant stopped work on the date of the claimed injury and later returned to limited-duty work. On the reverse side of the form S.B., appellant's immediate supervisor, checked a "No" box indicating that appellant was not injured in the performance of duty. She added the notation, "She was out on [leave without pay (LWOP)] due to nonwork-related condition."

In support of her claim, appellant submitted documents and medical reports from her visit to the emergency room on February 14, 2019. In a report from that visit, Chanrachna Ladin, a nurse practitioner, noted that appellant reported a February 14, 2019 fall and diagnosed right knee sprain and nondisplaced left patella fracture.

In a letter received by OWCP on February 21, 2019, E.D., a human resource specialist from the employing establishment, advised that the employing establishment was challenging appellant's claim. She indicated that appellant was placed off work on February 8, 2019 after a meeting with her supervisors and she was not working due to nonwork-related "issues that were permanent." E.D. noted that appellant refused to sign documentation presented to her by management, and she was placed on LWOP status. She maintained that appellant did not have an appointment with J.L. on February 14, 2019, and she went to the Jefferson Barracks location of the employing establishment "on her own and on her own time."

In a March 20, 2019 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of evidence needed and afforded her 30 days to submit the necessary evidence.

Appellant submitted additional documents from healthcare providers in support of her claim, including reports from Kathleen Berry, a nurse practitioner, and Dr. Matthew Bradley, a Board-certified orthopedic surgeon. She also submitted a journal entry from E.L., a coworker, in which she described appellant's refusal of medical attention after her February 14, 2019 fall.

By decision dated April 30, 2019, OWCP denied appellant's claim for a February 14, 2019 employment injury, finding that she failed to establish that she sustained injury while in the performance of duty. It noted that, at the time of claimed injury, appellant was in LWOP status for a nonwork-related condition, and was not on the premises due to a scheduled appointment or due to any purpose incidental to work. OWCP indicated, "[a]n employee's presence on the premises does not of itself afford the protection of the FECA. At the time of an injury, the

employee must be on the premises for a work-related purpose; otherwise, the employee is not covered by the premises rule."

On October 31, 2019 appellant, through counsel, requested reconsideration of the April 30, 2019 decision. In an accompanying letter, counsel asserted that J.C., a management official, advised appellant on February 8, 2019 to "go home as we have no work assignment for you." He indicated that, during the following week, appellant left numerous voice messages and sent numerous e-mails to human resources officials at the employing establishment in an attempt to gain clarification of her work and pay status. Counsel noted that appellant's pay stopped on February 8, 2019 and that, after receiving no responses to her communications, she visited the human resources office at Jefferson Barracks. He asserted that appellant's February 14, 2019 accident was covered because it occurred when she was on the premises of the employing establishment "with permission (expressed or implied)" engaging in an act incidental to her work, *i.e.*, attempting to determine her pay and work status.

By decision dated January 23, 2020, OWCP denied modification of its April 30, 2019 decision.

On March 20, 2020 appellant, through counsel, requested reconsideration of the January 23, 2020 decision. In a statement dated March 19, 2020, she asserted that on February 8, 2019 the associate chief nurse told her, "[w]e have no work for you, go home, you have no assignment." Appellant indicated that she went home without knowing her work status or expected return date. She asserted that she visited the employing establishment on February 14, 2019 because she did not receive a response to her e-mail and telephone inquiries regarding her work status. In a March 11, 2020 "affidavit," appellant further discussed her work history and the events of February 14, 2019. She submitted additional medical evidence in support of her claim.

By decision dated May 29, 2020, OWCP denied modification of its January 23, 2020 decision.

On May 26, 2021 appellant, through counsel, requested reconsideration of the May 29, 2020 decision. She submitted several letters, e-mails, and administrative forms, dated July 11, 2018 through April 10, 2021, regarding her request for work accommodation and her return to work in April 2019. Appellant submitted an undated statement and a May 12, 2021 statement further describing her attempts to contact the human resources office. In a May 14, 2021 statement, B.C., a coworker, asserted that it was necessary for appellant to visit the employing establishment on February 14, 2019, because she did not receive a response to her e-mails and telephone calls. She maintained that appellant was given a memorandum and follow-up instant message "directing her to go home, that she had no work assignment, and she was not on paid administrative leave." In a May 12, 2021 statement, J.M., a union official, indicated that appellant was told on February 8, 2019 to go home because there was no work assignment for her. Appellant also submitted additional medical evidence in support of her claim.

By decision dated August 24, 2021, OWCP denied modification of its May 29, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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 founded 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, a 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 not met her burden of proof to establish that she sustained an injury in the performance of duty on February 14, 2019, as alleged.

Appellant claimed that she sustained a work-related injury on February 14, 2019 when she tripped on a metal door jamb at the employing establishment premises and fell to the floor. She asserted that, at the time of her accident, she had just spoken with a J.L., an employing establishment human resource official, regarding her work status. Appellant acknowledged that she was not on official time on February 14, 2019, but asserted that she only visited the employing

[3] *Supra* note 2.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *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] *Mark Love*, 52 ECAB 490 (2001).

establishment after her attempts to communicate with the human resources office and confirm her work status had failed.

The Board finds that appellant has not met her burden of proof because she was not in the course of her employment at the time of her claimed February 14, 2019 injury and, therefore, was not in the performance of duty.

In a letter received by OWCP on February 21, 2019, E.D., a human resource specialist from the employing establishment, advised that the employing establishment was challenging appellant's claim. She indicated that appellant was placed off work on February 8, 2019 after a meeting with her supervisors and she was not working due to nonwork-related "issues that were permanent." E.D. indicated that appellant refused to sign documentation presented to her by management, and she was placed on LWOP status. She asserted that appellant did not have an appointment with J.L. on February 14, 2019, and she went to the Jefferson Barracks location of the employing establishment "on her own and on her own time."

The Board finds that the above-described information from the employing establishment demonstrates that appellant's February 14, 2019 fall did not occur at a time when she may reasonably be said to have been engaged in the master's business, at a place where she may reasonably have been expected to be in connection with the employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[10]

At the time of the February 14, 2019 fall, appellant was not engaged in the master's business, fulfilling the duties of her employment, or engaged in doing something incidental thereto.[11] Rather, she was engaged in an activity not directly related to her work duties, *i.e.*, pursuing a personnel matter pertaining to her leave and work status. Although she was on the premises of the employing establishment at the time of the February 14, 2019 fall, appellant was not on official work duty at the time. Nor was she directed to visit the employing establishment premises by any person in a position of authority. Management had advised appellant that she was on leave status, commencing February 8, 2019 and continuing, and there was no legitimate work purpose for her to visit the workplace on February 14, 2019. Therefore, at the time of the fall, appellant was not at a place where she may reasonably have been expected to be in connection with the employment.

For these reasons, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on February 14, 2019.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[10] *See supra* note 8.

[11] *See id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on February 14, 2019.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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