

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

S.R., Appellant)	
)	
and)	Docket No. 20-0532
)	Issued: July 25, 2023
U.S. POSTAL SERVICE, JACKSON)	
PROCESSING & DISTRIBUTION CENTER,)	
Jackson, MS, Employer)	
)	

Appearances:
John R. Reeves, Esq., for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On January 10, 2020 appellant, through counsel, filed a timely appeal from a November 8, 2019 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 is an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 4, 2012 appellant, then a 26-year-old contract driver, filed a traumatic injury claim (Form CA-1) alleging that, on April 4, 2011, she lost control and overturned the truck she was driving to transport mail. She sustained left arm injuries, including a left arm amputation.

Evidence submitted with the claim indicated that on April 21, 2009 the postal service had awarded V.L./Triple J. Enterprises, a private contractor, with Highway Contract Route No. 396A5, a set route from the Jackson Processing and Distribution Center in Jackson, Mississippi to Oak Vale, Mississippi, for the period May 2, 2009 through March 31, 2012. Under the terms of the contract, Triple J. Enterprises was responsible for supplying the vehicles used to transport mail, maintaining liability insurance for all vehicles used under the contract, employing suitable individuals to perform under the contract, and for hiring, firing, and paying the drivers hired under the contract. Under section B.3(d) of the contract, the private contractor could either use a sign on its vehicle noting, "United States Mail," or have inscribed on the doors of the vehicle the words "United States Mail Contractor."

On a PS Form 2081, Contractor Employee Assignment Notification, V.L. of Triple J. Enterprises indicated that, effective January 5, 2010, appellant, an employee of the contractor, was permanently assigned to contract number 396A5. The form also indicated that appellant required access to mail or postal premises under their contract with the postal service.

Pursuant to the terms of the contract, appellant underwent screening and identification requirements. She completed a Contract Personnel Questionnaire (PS Form 2025), indicating that she was a contractor/contractor's employee and was issued a nonpostal service temporary employee photo identification badge. Appellant was required to wear and display the identification badge while on postal property. She did not wear a postal service uniform. Appellant also completed a PS Form 2181-C, an "Authorization and Release -- Background Investigation (USPS Contractors and Employees of Contractors)."

Section B.1(4) of the contract, provided a specific schedule for the contractor's arrival and departure at various postal facilities between Jackson and Oak Vale, Mississippi, as well as a schedule for sorting, loading, and unloading mail at the various postal facilities. The work requirements were listed as sort, load, and unload all classes of mail at the headout, en route, and destination postal offices as directed by a postal establishment official. Postal establishment personnel could assist with loading and unloading in order to maintain a schedule. However, the

³ Docket No. 17-1051 (issued August 14, 2019).

contractor was responsible to ensure the truck was loaded correctly. The contractor was required to spot loads, where applicable, upon arrival at destinations and required to pick up outbound loads at locations(s) as directed by a postal official. The contract also indicated that the contractor could be assigned lobby/vestibule keys and/or a scanning device to be used in the delivery and collection of mail along the contract route, which had to be signed out prior to the start of the designated route and turned in at the end of the trip(s).

The postal service contended, in a February 16, 2012 letter, that, although appellant was “an affiliate” of the postal service *via* the transportation and delivery of mail, she was not a federal employee. Rather, she was employed by V.L./Triple J. Enterprises, an independent contractor.

Counsel argued, in November 16 and December 15, 2015 letters, that appellant was an employee for purposes of FECA benefits. He contended that the postmaster maintained control over appellant’s job duties, including when she reported to duty and the route she drove on a daily basis.⁴

By decision dated January 4, 2016, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that she was a federal employee under FECA. It found that an employee/employer relationship did not exist between appellant and the postal service at the time of the claimed injury. Rather, appellant was employed by an individual contractor, V.L./Triple J. Enterprises, at the time of the claimed injury.

On January 18, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. During the September 13, 2016 telephonic hearing, appellant testified that V.L./Triple J. Enterprises had hired her and that she transported mail for the postal service.⁵ She stated that she drove mail from the Jackson Post Office and delivered it to the smaller post offices in Sontag, Monticello, and Oakville. Appellant checked in with the postmaster at the Jackson Post Office, where she signed for keys for the other postal facilities. She would then sort through the mail on the deck, load her truck, and deliver the mail to the other post offices. Appellant testified that her schedule was set by the postmaster, who provided instructions on the assignment destinations, including the times for mail pickup and delivery. The postmaster additionally gave her the keys to postal facilities, where she was trusted to pick up money bags from the smaller post offices and return them to the postmaster in Jackson, Mississippi. She also testified that she had identification issued by the postal service.

Appellant testified that V.L. of Triple J. Enterprises had hired her and that her paychecks and 1099 tax forms were issued from V.L./Triple J. Enterprises, but she did not have a written contract of employment with V.L./Triple J. Enterprises. She noted that she had to complete an employment form for the postal service. Appellant stated that she did not have a supervisor at the postal service, but dealt directly with the postmaster.

⁴ Counsel also contended that the postal service was appellant’s “statutory employer” since Triple J. Enterprises did not have the required workers’ compensation insurance under state law.

⁵ Appellant stated that she had worked for the contractor for approximately two years prior to the time of the injury.

By decision dated December 28, 2016, OWCP's hearing representative affirmed the January 4, 2016 decision, finding that the evidence of record was insufficient to establish that appellant was an employee of the United States under FECA.

On April 27, 2017 appellant, through counsel, filed a timely appeal from OWCP's December 28, 2016 merit decision.

By decision dated August 14, 2019, the Board set aside OWCP's December 28, 2016 decision and remanded the case to OWCP for further development of the factual evidence regarding the question of whether appellant was an employee within the meaning of FECA at the time of her injury on April 4, 2011. The Board noted that when the issue of whether a claimant is an employee or an independent contractor becomes a factor, OWCP's procedures require development of the claim by inquiry with the alleged employer regarding the employment relationship, if any, with a claimant.⁶

In a letter also dated September 16, 2019, OWCP requested additional factual information from the postal service pursuant to the Board's remand order.

In a September 27, 2019 response, the postal service indicated that there was no written agreement, work contract, or oath executed either by it or appellant. There was also no documentation of an oral agreement, between appellant and the postal service. Rather, per the contract, the postal service established the services performed by V.L./Triple J. Enterprises and paid V.L./Triple J. Enterprises for contract services. Per the contract, reference page B-8, paragraph 2 B.5, the supplier (V.L./Triple J. Enterprises) was to identify all individuals hired as drivers and submit two original forms 2025, contract personnel questionnaire, one original Form 2181-C, authorization and release, background investigation, two original forms FD 258, fingerprint card and two full face color photographs. Drivers hired by V.L./Triple J. Enterprises were responsible for performing the duties required under the contract. V.L./Triple J. Enterprises was responsible for hiring and firing drivers, including appellant. It noted that appellant had completed the required PS-Form 2025, which confirmed that she was a contract employee for V.L./Triple J. Enterprises. Triple J. Enterprises paid appellant's salary and issued her an IRS Form 1099 for tax purposes. The postal service indicated that V.L./Triple J. Enterprises determined whether appellant performed services and the activity in which appellant engaged. It also denied paying appellant; noting that, as an independent contractor, V.L./Triple J. Enterprises was responsible for paying its drivers. It also denied knowledge of whether appellant had any other employment or performed or offered like or similar services to the public as an independent business service. The postal service concluded that it paid Triple J. Enterprises for contract services. Pursuant to the contract, the postal service established the services that Triple J. Enterprises was required to perform and had the right to direct Triple J. Enterprises to perform such services required under the contract.

In support of its statements, the postal service submitted evidence, which included: a February 1, 2010 e-mail indicating that appellant's security clearance was approved; a copy of a non-postal service temporary employee identification, with an expiration date of April 8, 2010; a December 13, 2009 authorization for release -- background investigation; the front page of

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Civil Employee*, Chapter 2.802.6 (June 1995).

Contract Personnel Questionnaire with appellant's information; a copy of appellant's ID, with an expiration date of December 31, 2012 and a notation of "C"; an April 21, 2009 notice of contract award to V.L. of Triple J. Enterprises for the period May 2, 2009 through March 31, 2012; an April 12, 2012 letter from OWCP to counsel, concluding that appellant was not a federal employee; a May 12, 2009 contract route service order, supplier listed as V.L.; duplicate copies of appellant's traumatic injury claim forms (Form CA-1) dated February 4, 2012 and November 9, 2015; an undated position statement from the postal service, indicating that appellant was not an employee; a February 16, 2019 letter from the postal service to counsel, asserting that appellant was not an employee; a January 5, 2010 Contractor Employee Assignment Notification for appellant requesting access to the mail and postal premises under the contract for V.L./Triple J Enterprises; the cover page of award of contract 396A5; an August 4, 2011 negotiated cost statement for Highway Transportation Contracts, with the supplier noted as V.L.; an April 1, 2011 schedule information for supplier V.L./Triple J Enterprises, showing schedule of trip and total mileage per trip; a May 2, 2009 statement of work and specifics, indicating specific details of the contract with V.L./Triple J. Enterprises including schedules, type of truck/trailer to be used, screening requirements for contract employees, safety requirement, and procedures for moving mail.

In an October 17, 2019 letter, the postal service reiterated that appellant was not an employee and submitted additional evidence.

By decision dated November 8, 2019, OWCP again denied appellant's claim, finding that she was not a civil employee of the Federal Government at the time of the alleged April 4, 2011 injury. It found that the evidence of record was insufficient to establish that an employer/employee relationship existed at the time of the claimed injury as required for coverage under FECA.

LEGAL PRECEDENT

FECA provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of her duty.⁷ A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that the claimant was an employee within the meaning of FECA.⁸

For purposes of determining entitlement to compensation benefits under FECA, an employee is defined, in relevant part, as:

“(A) a civil officer or employee in any branch of the [g]overnment of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

⁷ 5 U.S.C. § 8102(a).

⁸ *A.M.*, Docket No. 16-1038 (issued December 23, 2016); *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

“(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual...”⁹

With regard to whether a claimant is a federal employee for purposes of FECA, the Board has noted that such a determination must be made considering the particular facts and circumstances surrounding his or her employment.¹⁰ Included among the many factors to be considered are the right of control of the work activities, the right to hire and fire, the nature of the work performed, the method of payment for the work, the length of time of the job and the intention of the parties.¹¹ The statute does not require that any written form of agreement be entered into by the employing establishment and the individual providing services prior to acceptance of personal services by the employing establishment.¹² With regards to the party who paid the wages, the implication that a claimant was a federal employee cannot be drawn solely from the fact that his or her salary was derived from a fund to which the Federal Government contributed.¹³

OWCP’s procedures indicate that, when there is a question as to whether appellant is an employee or an independent contractor, the claims examiner should request statements from the employee and the reporting employing establishment to indicate, *inter alia*, whether the employing establishment is required to furnish any tools or equipment; the period of time the work relationship is to exist; whether the reporting employing establishment has the right to control or direct how the work is to be performed with full explanation; the manner in which payment for the employing establishment services is determined; and whether the activity in which the employing establishment is engaged is a regular and continuing activity of the reporting employing establishment.¹⁴

OWCP’s procedures also provide that the question of whether mail messengers for the postal service are considered civil employees is made on a case-by-case basis by a senior claims examiner.¹⁵ The procedure manual indicates that the senior claims examiner should ask the reporting agency for copies of any written agreement or work contract executed by the mail messenger or the postal service when the injured individual began working or at any later date, and of any oath executed by the worker. It should also request a statement from the alleged employing establishment regarding the manner in which the worker qualified and was selected to act as mail messenger, the distance the mail was carried, the kind of equipment used and by whom

⁹ 5 U.S.C. § 8101(1).

¹⁰ *Donald L. Dayment*, Docket No. 01-1846 (issued January 21, 2003).

¹¹ *Larry E. Young*, 52 ECAB 264 (2001).

¹² *Jane Doe*, 49 ECAB 646, 649 (1998).

¹³ *S.D.*, Docket No. 13-0090 (issued August 22, 2013); *David Nivens*, 46 ECAB 926, 934 (1995); *Darlene Menke*, 43 ECAB 173, 178 (1991); *Carl R. Clover*, 41 ECAB 624, 632 (1990).

¹⁴ *Supra* note 6 at Chapter 2.802.6(a) (June 1995).

¹⁵ *Id.* at Chapter 2.802.7 (June 1995).

it was furnished, whether the mail messenger was required to personally perform the service or whether assistants or substitutes were permitted, whether the mail messenger had any other employment or performed or offered like or similar services to the public as an independent business service, the manner and circumstances under which the relationship could be terminated, the manner in which the pay was determined, who determined how, when and in what manner the mail would be carried, what right, if any, the postmaster had to direct or supervise the work performed by the mail messenger and to what extent the postmaster exercised that right.¹⁶

ANALYSIS

The Board finds that appellant was not an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA.

The Board has previously explained that whether a claimant is a federal employee under FECA is a case-by-case determination.¹⁷ The evidence of record establishes that appellant was a driver for V.L./Triple J. Enterprises, which, at the time of the alleged injury on April 4, 2011, was contracted to provide transportation services to the postal service under contract 396A5. The contract ran for the term May 2, 2009 through March 31, 2012. Under the terms of the contract, Triple J. Enterprises was responsible for: supplying the vehicles used to transport the mail; maintaining liability insurance for all vehicles used under the contract; employing suitable individuals to perform under the contract, including hiring and firing of such individuals; and paying the individuals hired under the contract. Triple J. Enterprises paid appellant's salary and issued her a 1099 for tax purposes. The Board notes that Triple J. Enterprises, not the postal service, hired appellant as a driver, and appellant completed a PS-Form 2025, which confirmed that she was a contract employee for Triple J. Enterprises.

The Board has held that the question of whether a claimant is an employee of the United States or an employee of an independent contractor is ultimately a question of fact to be decided on an individual basis in the particular case. However, among the factors to be considered in resolving this issue, the most important is the question of the right to control the work activities of the claimant whose status is under consideration.¹⁸

Although the postal service may have directed some of appellant's work duties to ensure a satisfactory result of the security and tracking of mail, the manner in which the services were performed were within the control of appellant and Triple J. Enterprises.¹⁹

¹⁶ *Id.* at Chapter 2.802.7.

¹⁷ *Supra* note 9.

¹⁸ *R.L.*, Docket No. 10-0991 (issued January 6, 2011).

¹⁹ *Carl R. Clover*, 41 ECAB 625 (1990); *Order Granting Petition for Recon. and Granting Clarification*, Docket No. 90-309 (issued March 7, 1991).

The Board, therefore, finds that appellant was not an employee of the postal service when she was injured on April 4, 2011.²⁰ Therefore, appellant has not established that she is an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA.

CONCLUSION

The Board finds that appellant is not an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²⁰ See *Darlene Menke*, *supra* note 13.