

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

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<b>W.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1032</b>
	)	<b>Issued: July 14, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>BOISE VA MEDICAL CENTER, Boise, ID,</b>	)	
<b>Employer</b>	)	
_____	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 25, 2021 appellant filed a timely appeal from a May 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 10, 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on September 3, 2020, as alleged.

## FACTUAL HISTORY

On February 10, 2021 appellant, then a 66-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 2020 at approximately 8:45 a.m. he injured his left hand, left elbow, and knees when he fell when checking into a medical appointment on the employing establishment's premises while in the performance of duty. He explained that, once he arrived at the clinic, he was checking in at a kiosk when he dropped his identification card, bent over to retrieve it, and fell. On the reverse side of the claim form, the employing establishment contended that appellant was not in the performance of duty at the time of injury as he was on "approved leave status." Appellant did not stop work.

A leave request form dated August 28, 2020, indicated that appellant requested sick leave to attend a medical appointment on September 3, 2020 from 8:30 a.m. to 10:00 a.m. An employing establishment supervisor approved the request on August 28, 2020.

In a development letter dated April 7, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an undated response, appellant indicated that on September 3, 2020 he attended a medical appointment with Dr. Marcel Roy, a Board-certified internist, on the employing establishment's premises. He noted that he walked from his office down to the location of the clinic and, along the way, escorted a veteran who was having trouble finding the location. Once there, appellant was checking into his appointment at a kiosk when he dropped his identification card, leaned forward to retrieve it, and fell onto his right hand and knee.

In a discharge note dated September 4, 2020, Dr. Rick Wright, an osteopath, Board-certified in emergency medicine, indicated that appellant was treated at the emergency department on that date for right knee pain after a fall. He obtained a history of appellant experiencing numbness and tingling of the right leg and pain in appellant's right lower back due to a fall that occurred while he was checking in for a medical appointment on September 3, 2020.

In a November 12, 2020 medical report, Dr. Alejandro A. Homaechegarria, a Board-certified family and sport medicine specialist, indicated that appellant related complaints of right knee pain which he attributed to a fall in September 2020. He reviewed a magnetic resonance imaging (MRI) scan of the right knee dated October 20, 2020, which he found demonstrated a medial meniscus tear, medial femorotibial compartment chondromalacia, probable medical collateral ligament sprain, joint effusion, and increased fluid in the medial popliteal fossa. Dr. Homaechegarria noted appellant's history of right knee meniscal surgery in 2008 and diagnosed primary osteoarthritis of the right knee and a recent tear of the medial meniscus.

In a February 26, 2021 report, Dr. Nicholas J. Yokan, a Board-certified orthopedic surgeon, indicated that appellant related right shoulder pain after a fall in September 2020. He reviewed a January 12, 2021 MRI scan of the right shoulder, which he found demonstrated a tear of the anterior supraspinatus. Dr. Yokan diagnosed a right shoulder rotator cuff tear and recommended arthroscopic surgical repair.

By decision dated May 10, 2021, OWCP found that appellant had established that the September 3, 2020 incident occurred as alleged and that a medical condition had been diagnosed in connection with the incident. It denied his claim, however, as the medical evidence of record was insufficient to establish that he was in the performance of duty at the time the September 3, 2020 incident occurred as he was on leave and not within the course of employment and within the scope of compensable work factors as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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

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<sup>3</sup> *Supra* note 1.

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

<sup>5</sup> *G.A.*, Docket No. 21-1362 (issued February 23, 2023); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *M.H.*, Docket No. 21-0891 (issued December 22, 2021); *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).

<sup>7</sup> 5 U.S.C. § 8102(a).

out of and in the course of employment.”<sup>8</sup> The phrase “in the course of employment” is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. 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 stated 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.<sup>9</sup> 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.<sup>10</sup>

Injuries arising on the employing establishment’s premises may be approved if the claimant was engaged in activity reasonably incidental to his or her employment.<sup>11</sup> However, an employee’s presence on the premises does not of itself afford FECA protection.<sup>12</sup> 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 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury occurred in the performance of duty on September 3, 2020, as alleged.

The record reflects that on August 28, 2020 appellant submitted a request for sick leave to attend a physician’s appointment on September 3, 2020 from 8:30 a.m. to 10:00 a.m. An employing establishment supervisor approved the request on August 28, 2020. On the Form CA-1, appellant noted that his accident occurred on September 3, 2020 at 8:45 a.m. when he was checking in to a medical appointment. In his subsequent response to OWCP’s development questionnaire, he indicated that he left his office to attend a medical appointment and escorted a veteran to the

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<sup>8</sup> See *M.Z.*, Docket No. 20-1078 (issued December 16, 2022); *N.B.*, Docket No. 20-1446 (issued March 19, 2021); *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

<sup>9</sup> See *N.B.*, *id.*; *M.T. id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

<sup>10</sup> *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).

<sup>11</sup> *K.A.*, Docket No. 20-0787 (issued September 16, 2021); *A.P.*, Docket No. 18-0886 (issued November 16, 2018); *S.M.*, Docket No. 16-0875 (issued December 12, 2017); *J.O.*, Docket No. 16-0636 (issued October 18, 2016); *T.L.*, 59 ECAB 537 (2008). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4a(2) (August 1992).

<sup>12</sup> *Id.* at Chapter 2.804.4c(2) (August 1992).

<sup>13</sup> *J.O.*, Docket No. 16-0636 (issued October 18, 2016).

same location whom he had encountered along the way. Once at the clinic, appellant was checking in at a kiosk, dropped his identification, bent over to retrieve it, and fell.

The Board finds that the evidence of record is insufficient to establish that appellant was engaged in the employing establishment's business, reasonably fulfilling the duties of his employment, or engaged in an activity incidental thereto at the time of the September 3, 2020 incident. When he fell, appellant was on preapproved sick leave and was attending a personal medical appointment.<sup>14</sup> Although the appointment took place on the employing establishment's hospital premises, there is no evidence supporting that he was in the performance of duty at that time. Appellant indicated that he assisted a veteran in finding the clinic; however, once he arrived at the appointment to check in, there is no evidence of record to suggest that he was fulfilling any duties of his federal employment or engaged in an activity reasonably incidental thereto. Thus, the Board finds that he has not established that he sustained an injury in the performance of duty on September 3, 2020, as alleged.<sup>15</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury while in the performance of duty on September 3, 2020, as alleged.

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<sup>14</sup> See *M.Z.*, *supra* note 8.

<sup>15</sup> *Id.* See also *J.N.*, Docket No. 19-0045 (issued June 3, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2023  
Washington, DC

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

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

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