

<sup>2</sup> The Board notes that following the April 9, 2025 decision, appellant submitted additional evidence with his appeal to the Board. 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 January 17, 2025 appellant, then a 64-year-old delivery performance specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 10, 2025, at 8:15 a.m., he injured his right shoulder when he tripped and fell while in the performance of duty. He explained that contract workers had removed a safety pole in order to get their equipment in the break area and did not place any signs to warn others that a hole was left where the pole had been removed. Appellant indicated that he struck his shoulder and head on the floor and experienced back spasms. On the reverse side of the claim form, the employing establishment alleged that he was not in the performance of duty at the time of the alleged incident as he was injured while walking into the building to report for duty. It noted that appellant's regular work hours were 8:30 a.m. to 5:00 p.m. He stopped work the same day.

In a January 10, 2025 report, Dr. Ibukunolu Oyenike Oni, a Board-certified internist, related that appellant fell that day. He diagnosed right shoulder pain, specific phobia of enclosed spaces, head injury, accidental fall, and hypertension. In a note of even date, Dr. Oni indicated that appellant could return to work on January 15, 2025.

In a January 22, 2025 industrial work status report, Dr. Daniel S. Robertson, a Board-certified orthopedic surgeon, noted a January 10, 2025 date of injury and diagnosed right rotator cuff tear. He placed appellant off work January 10 through February 23, 2025 and released him to modified activity beginning February 24 through April 13, 2025 due to incapacitating injury or pain.

In a February 4, 2025 development letter, 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 questionnaire for his completion. OWCP afforded appellant 60 days to provide the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide additional factual information regarding appellant's claim, including whether the premises on which the employee was injured was owned, operated, or controlled by the employing establishment. OWCP further requested that the employing establishment provide a diagram showing the boundaries of its premises and the location of the injury site in relation to the premises. It afforded the employing establishment 30 days to respond. No response was received.

In a letter dated February 24, 2025, OWCP notified appellant that it had performed an interim review and determined that the evidence of record remained insufficient to establish his claim. It advised that he had 60 days from the February 4, 2025 letter to submit the necessary evidence. OWCP further advised that if the necessary evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received copies of an article from an unknown source.

By decision dated April 9, 2025, OWCP denied appellant's claim, finding that he did not sustain an injury in the performance of duty on January 10, 2025, as alleged.

## **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, 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>4</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>5</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>6</sup>

The Board has interpreted the phrase “sustained while in the performance of duty” to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”<sup>7</sup> The phrase “in the course of employment” encompasses the work setting, the locale, and time of injury. The phrase “arising out of the employment” encompasses not only the work setting, but also a causal concept with the requirement being that an employment factor caused the injury.<sup>8</sup> To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said 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 circumstances, a causal relationship

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

<sup>4</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>5</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); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *See* 5 U.S.C. § 8102(a); *see A.D.*, Docket No. 25-0208 (issued February 20, 2025); *J.N.*, Docket No. 19-0045 (issued June 3, 2019).

<sup>7</sup> *See M.Z.*, Docket No. 20-1078 (issued December 16, 2022); *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>8</sup> *L.B.*, Docket No. 19-0765 (issued August 20, 2019); *G.R.*, Docket No. 16-0544 (issued June 15, 2017); *Cheryl Bowman*, 51 ECAB 519 (2000).

<sup>9</sup> *A.S.*, Docket No. 18-1381 (issued April 8, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

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 this case is not in posture for decision.

In a February 4, 2025 development letter, OWCP requested additional information from the employing establishment, including whether it owned, operated, or controlled the premises on which the employee was injured. It further requested that the employing establishment provide a diagram showing the boundaries of its premises and the location of the injury site in relation to the premises. OWCP afforded the employing establishment 30 days to respond. However, no response was received.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>14</sup> While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.<sup>15</sup>

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<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> *See W.W.*, Docket No. 21-1032 (issued July 14, 2023); *J.O.*, Docket No. 16-0636 (issued October 18, 2016).

<sup>14</sup> *See L.S.*, Docket No. 18-1208 (issued April 30, 2020); *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>15</sup> *See A.D.*, Docket No. 24-0426 (issued July 8, 2025); *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *N.S.*, 59 ECAB 422 (2008).

On remand, OWCP shall obtain the requested information from the employing establishment regarding whether appellant was injured in the performance of duty. Following this and other such further development, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2025 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: August 28, 2025  
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