United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 25-0820**
DEPARTMENT OF VETERANS AFFAIRS, FRANKLIN DELANO ROOSEVELT HOSPITAL, Montrose, NY, Employer	)	**Issued: November 21, 2025**

Appearances:
Sara Kincaid, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 18, 2025 appellant, through counsel, filed a timely appeal from an April 11, 2025 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.[3]

[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*.

[3] The Board notes that following the April 11, 2025 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 her burden of proof to establish that she sustained an injury in the performance of duty on January 8, 2024, as alleged.

FACTUAL HISTORY

On January 20, 2024 appellant, then a 56-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2024 at 11:55 p.m. she injured her head, lower back, right shoulder, and right hip, knee, lower extremity, wrist, and hand, when she slipped on ice and fell in the employee parking lot while in the performance of duty. The employing establishment indicated on the claim form that she was in the performance of duty at the time of the alleged incident.

OWCP received a January 9, 2024 report and work slip by Dr. Shahram Ahari, Board-certified in emergency medicine, wherein he noted that appellant had been treated that day in the hospital emergency department for right shoulder and right-sided neck pain sustained in a "fall yesterday on black ice." He diagnosed muscle strain. Dr. Ahari held appellant off work through January 12, 2024.

In a January 22, 2024 statement, appellant's supervisor recounted that on January 8, 2024, appellant had been on duty from 4:00 p.m. through 12:00 a.m. Appellant notified her by e-mail on January 9, 2024 that she had gone outside to start her car as her shift was about to end. She slipped and fell on ice, landing on her right side and striking her head.

In a January 23, 2024 statement, the employing establishment asserted that on January 8, 2024, appellant fell at 11:38 p.m., as confirmed by video, slipped on ice, and fell on the walkway to the parking lot. She had gone outside to preheat her car. Following the incident, appellant returned to her duty station and finished her shift at 12:00 a.m.

In a March 12, 2024 statement, the employing establishment controverted the claim. It asserted that appellant was not in the performance of duty at the time of the claimed injury as she "did not have permission to leave her duty station 20 minutes early to preheat her vehicle."

In an April 11, 2024 development letter, OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. It afforded her 60 days to provide the necessary evidence. In a separate development letter of even date, OWCP requested that the employing establishment provide additional factual information, including whether appellant was injured in a parking lot that it controlled or managed. It afforded the employing establishment 30 days for the submission of the requested information.

In an April 17, 2024 statement, the employing establishment related it owned and managed the parking lot where appellant fell.

In a May 10, 2024 response to OWCP's questionnaire, appellant asserted that she went outside to preheat her car using a portion of her allotted 15-minute break. She noted that there had been significant snow the previous day and that the weather was very cold.[4]

By decision dated June 25, 2024, OWCP denied appellant's traumatic injury claim. It found that, while she was on the premises of the employing establishment at the time of the accepted employment incident, she was not engaged in an activity reasonably incidental to her employment and thus not in the performance of duty as defined by FECA.

On June 25, 2024 appellant requested reconsideration.

In a July 12, 2024 statement, the employing establishment asserted that at the time of the January 8, 2024 incident, appellant had parked her car illegally to the side of the Emergency Room entrance. It contended that appellant's errand was personal in nature and did not arise out of her employment. The employing establishment also asserted that employees were not allowed to split their 15-minute breaks, and that appellant was not authorized "to leave her post to pre-heat her car, an activity clearly not in the performance of duty."

By decision dated September 16, 2024, OWCP denied modification.

On January 14, 2025 appellant, through counsel, requested reconsideration. She clarified that she had not split her 15-minute break but used one of her 15-minute breaks to go outside to her car. Appellant asserted that her duties, including answering emergency calls, often prevented her from taking her break until very late in her work shift as occurred on January 8, 2024. She contended that it was common for employees to use their 15-minute break to go outside and warm up their car prior to the end of a work shift. Counsel asserted that appellant's errand fell within the coverage of the personal comfort doctrine.[5]

In a February 10, 2025 statement, the employing establishment asserted that it was "not aware of employees warming up their cars prior to the shift during very cold days/nights in winter." Employees were not allowed to use breaks at the beginning or end of their tour of duty. The employing establishment explained that scheduling flexibilities "certainly did not contemplate employees going out to start their car within 30 minutes of their tour ending."

In a February 10, 2025 memorandum of telephone call (Form CA-110), the employing establishment clarified that appellant would have been permitted to take her 15-minute break at the time of the January 8, 2024 incident "as long as she had not taken a break earlier in the afternoon." The employing establishment explained that if that was the only break appellant had taken, appellant "would have been permitted to go to her car and warm up her car as long as she was back to her work area within the allotted break time, and that there was "no rule against an employee warming their car up during break time."

[4] OWCP received medical evidence regarding the injuries appellant sustained on January 8, 2024.

[5] OWCP also received information about the weather near appellant's duty station on January 8, 2024, and a series of photographs allegedly of the area at the employing establishment where appellant had parked.

In a February 11, 2025 statement, the employing establishment contended that appellant had given inconsistent accounts of the time of the alleged January 8, 2024 incident. Also, surveillance footage revealed that appellant's car had been idling in the emergency room parking lot although there was "No Idling" signage posted approximately 20 feet from where appellant had parked. The employing establishment included a still image from the surveillance footage and a photograph of the "No Idling" sign.

In a March 4, 2025 statement, the employing establishment explained that employees were not allowed to finish a tour of duty using break time.

In an April 1, 2025 statement, appellant, through counsel, contended that she was on an authorized break at the time of the January 8, 2024 incident, that she had not split her break, that she had not ended her tour on break time, that there was no proof that she had parked illegally, and that idling her vehicle was in concert with a state statute on idling reduction.[6]

OWCP received a March 24, 2025 statement by one of appellant's coworkers, wherein he asserted that he had not been instructed that he could not warm up his car during the winter before he ended his shift.

In a March 27, 2025 statement, one of appellant's coworkers asserted that the "no idling" sign was directed at ambulances and transportation shuttles, not employees. She contended that during the winter, some medical administrative specialists would "go out to clean off their vehicles in bad snowstorms" and that this had not been an issue.

By decision dated April 11, 2025, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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,[8] 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.[9] 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.[10]

[6] Counsel enclosed a copy of the state statute and explanatory materials.

[7] *Supra* note 1.

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

[9] *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).

[10] *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).

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.[11]

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."[12] 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.[13] 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.[14] In deciding whether an injury is covered by FECA, the test is whether, under all circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on January 8, 2024, as alleged.

Appellant asserted that she injured her head, lower back, right shoulder, and right knee, lower extremity, wrist, and hand when she slipped on ice and fell in an employing establishment parking lot during a break approximately 20 minutes before the end of her work shift. She explained that she had gone outside to preheat her car during cold weather. The employing establishment controverted the claim, contending in a July 12, 2024 statement that appellant was not authorized to leave her post to preheat her car. In February 10, 2025 statements, it clarified that while there was no rule against an employee using break time to go outside to preheat a car,

[11] *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).

[12] *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).

[13] *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).

[14] *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).

[15] *J.S.*, Docket No. 25-0334 (issued March 21, 2025); *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).

that scheduling flexibilities certainly did not contemplate employees doing so within 30 minutes of their tour ending.

OWCP accepted that appellant was in duty status and on the premises of the employing establishment at the time the incident occurred. However, the mere fact that she was on the premises and on duty at the time of injury is not sufficient to establish entitlement to compensation benefits. Appellant must also be engaged in activities incidental to her employment, activities which fulfilled her employment duties or responsibilities thereto.[16]

In the case of *Barbara D. Heavener*,[17] the Board found a claimant's fall during work hours and on the premises of the employing establishment did not occur in the performance of duty. The claimant left her office building to retrieve an address book from her motor vehicle so she could contact relatives about a family emergency. The Board found that she was engaged in a personal mission unrelated to her employment and not in activities reasonably incidental to her employment.

In *Robert A. Pszczolkowski*,[18] a claimant was injured during working hours in a parking lot on the premises of the employing establishment when he left his building to get personal mail from his vehicle and fell on ice. The Board held that he was not in the performance of duty as his action was not reasonably incidental to employment but constituted a personal mission unrelated to employment. The Board further found that obtaining mail was not an activity necessary for personal comfort or ministration.

In *A.K.*,[19] a claimant was injured during working hours on the premises of the employing establishment while going to his vehicle to retrieve personal correspondence. The Board held that he was not in the performance of duty as his actions were personal in nature and not related to the employing establishment's business or reasonably incidental to his employment. It found that the claimant's activities could not be likened to incidental acts, such as using a toilet facility, drinking coffee or similar beverages, or eating a snack during a recognized break in the daily work hours, which are generally recognized as personal ministrations that do not take the employee out of the course of his or her employment.

In *D.K.*,[20] a claimant was injured during work hours on the employing establishment's premises when she went outside to move her personal vehicle to another location before dark. The Board held that she was not in the performance of duty as she was on a personal mission unrelated to the employing establishment's business and not reasonably incidental to her employment. The Board also found that the claimant's activities were not necessary for personal comfort or ministration.

[16] *J.S.*, *id.*; *see Barbara D. Heavener,* 53 ECAB 142 (2001).

[17] *Id*.

[18] Docket No. 01-1645 (issued April 11, 2002).

[19] Docket No. 09-2032 (issued August 3, 2010).

[20] Docket No. 11-1029 (issued February 1, 2012).

In *J.S.*,[21] a claimant was injured during working hours on the employing establishment's premises when, as she returned from a lunch break, she went to her personal vehicle to roll up the windows as it had begun to rain. The Board held that she was not in the performance of duty as her actions were personal in nature and not related to the employing establishment's business or reasonably incidental to the claimant's employment. The Board found that the claimant's activities were not necessary for personal comfort or ministration.

Turning to the instant case, appellant's injury occurred as she walked to her car to preheat it during cold weather, approximately 20 minutes before the end of her shift. Her actions were personal in nature and not related to the employing establishment's business or reasonably incidental to her employment.[22] The Board finds that appellant's activities cannot be likened to incidental acts of personal comfort, such as using a toilet facility,[23] drinking coffee or similar beverages[24] or eating a snack during a recognized break in the daily work hours.[25] The departure of appellant from her workstation to preheat her car is not considered an activity necessary for personal comfort or incidental to her employment. Therefore, she was not in the performance of duty when she fell on January 8, 2024. For these reasons, the Board finds that appellant failed to meet her burden of proof to establish a claim for a January 8, 2024 employment injury.[26]

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

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on January 8, 2024, as alleged.

[21] *Supra* note 15.

[22] *See also Valerie C. Boward, supra* note 12.

[23] *See V.O.,* 59 ECAB 500 (2008); *Frank M. Escalante,* 13 ECAB 160 (1961).

[24] *See Helen L. Gunderson,* 7 ECAB 707 (1955).

[25] *Supra* note 19.

[26] *See J.L.,* Docket No. 14-0368 (issued August 22, 2014).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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