

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

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<b>J.B., Appellant</b>	)	
<b>and</b>	)	
<b>U.S. POSTAL SERVICE, FORT POINT POST OFFICE, BOSTON, MA, Employer</b>	)	
	)	<b>Docket No. 25-0748</b>
	)	<b>Issued: September 25, 2025</b>
	)	
	)	

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*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 25, 2025 appellant filed a timely appeal from a March 19, 2025 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>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that he was an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA.

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

<sup>2</sup> The Board notes that, following the March 19, 2025 decision, appellant submitted additional evidence to OWCP. 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 December 27, 2024 appellant, then 46 years old, filed an occupational disease claim (Form CA-2) alleging that he injured his legs and knees when he slipped on ice and fell to the ground.<sup>3</sup> He noted that he first became aware of his claimed condition and realized its relation to factors of his federal employment on January 8, 2022.<sup>4</sup> On the reverse side of the claim form, N.F., an occupational health specialist for the employing establishment, advised that appellant was not working for the employing establishment at the time of the claimed injury. She stated, “This is not a[n] [employing establishment] claim.”

Appellant submitted medical evidence in support of his claim.

In a January 15, 2025 development letter, OWCP informed appellant of the deficiencies of the claim. It advised him of the type of factual and medical evidence needed, including factual evidence to support that he sustained a work injury while a federal employee. OWCP afforded appellant 60 days to respond. In a separate development letter dated January 15, 2025, OWCP requested that the employing establishment provide information, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It noted that if there was disagreement, the employing establishment was to “explain fully and provide any appropriate supportive evidence.” OWCP afforded the employing establishment 30 days to respond.

On January 15, 2025 N.F. responded only that appellant was not employed by the employing establishment in 2022. Rather, she stated, “he was working for ‘Housing’ (Warehouse).” No supporting evidence was received.

In a follow-up letter dated January 31, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the January 15, 2025 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In response, appellant submitted a September 7, 2024 report, wherein Dr. Gerges mentioned appellant’s reporting of a January 18, 2024 injury while working for the employing establishment. Appellant also resubmitted evidence previously of record.

By decision dated March 19, 2025, OWCP denied appellant’s claim. It noted that the evidence of record did not support that an employer/employee relationship existed at the time of the claimed injury as required for coverage under FECA. OWCP indicated that “the claim is

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<sup>3</sup> On the claim form, appellant listed his occupation as “housing” and referred to himself as a “warehouse agent.”

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx020. Appellant filed additional claims on December 27, 2024, assigned OWCP File Nos. xxxxxx547 and xxxxxx013. In all three of these claims, OWCP found that appellant had not established that he was a covered employee under FECA. Also, appellant previously filed a claim for a January 18, 2024 traumatic injury, assigned OWCP File No. xxxxxx594, wherein OWCP found that a ppellant was an employee under FECA but denied the claim finding that the medical evidence of record wa s insufficient to establish a medical condition causally related to the accepted employment incident. Appellant’s claims have not been administratively combined by OWCP.

denied because it is not established that you are a civil employee for the purpose of 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.<sup>5</sup> 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.<sup>6</sup>

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 Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

“(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....”<sup>7</sup>

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.<sup>8</sup>

### **ANALYSIS**

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

Appellant alleged an injury in the performance of duty. On the reverse side of the claim form, N.F., an occupational health specialist for the employing establishment, advised that appellant was not working for the employing establishment at the time of the claimed injury. She stated, “This is not a[n] [employing establishment] claim.” In a development letter dated January 15, 2025, OWCP requested that the employing establishment provide information, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *A.M.*, Docket No. 16-1038 (issued December 23, 2016); *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

<sup>7</sup> 5 U.S.C. § 8101(1).

<sup>8</sup> *S.R.*, Docket No. 20-0532 (issued July 25, 2023); *Donald L. Dayment*, Docket No. 01-1846 (issued January 21, 2003).

allegations. It noted that if there was disagreement, the employing agency was to “explain fully and provide any appropriate supportive evidence.” OWCP afforded the employing establishment 30 days to respond. On January 15, 2025, N.F. responded only that appellant was not employed by the employing establishment in 2022. Rather, she stated, “he was working for ‘Housing’ (Warehouse).” No supporting evidence was received.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>9</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>10</sup> As the employing establishment has not sufficiently responded to OWCP’s January 15, 2025 development letter, the Board is not in a position to make an informed decision regarding appellant’s employment status.

The case shall therefore be remanded for further development. On remand, OWCP shall obtain the requested information from the employing establishment regarding whether appellant was an employee of the United States under 5 U.S.C. § 8101(1) for the purpose of coverage under FECA. Furthermore, for full and fair adjudication, it shall administratively combine appellant’s claims under OWCP File Nos. xxxxxx547, xxxxxx020, xxxxxx594, and xxxxxx013. 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.

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<sup>9</sup> See L.S., Docket No. 18-1208 (issued April 30, 2020); *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>10</sup> See H.J., Docket No. 25-0667 (issued August 28, 2025); 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 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: September 25, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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