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L.H., Appellant	)	
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and	)	
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DEPARTMENT OF VETERANS AFFAIRS,	)	Docket No. 25-0918
JOHN L. McCLELLAN MEMORIAL	)	Issued: July 9, 2026
VETERANS’ HOSPITAL, VETERANS	)	
CANTEEN SERVICES, Little Rock, AK,	)	
Employer	)	
	)	

Case Submitted on the Record

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

On September 26, 2025 appellant filed a timely appeal from a September 5, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

² The Board notes that, following the September 5, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 a traumatic injury in the performance of duty on April 29, 2025, as alleged.

FACTUAL HISTORY

On May 8, 2025 appellant, then a 47-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on April 29, 2025 she sustained injuries to her left leg, left knee, and left hip when an unknown man approached her, grabbed her by her legs, and attempted to force her out of her vehicle while in the performance of duty. She reported that the incident occurred when she drove up to the employing establishment at 4:35 a.m. On the reverse side of the claim form, the employing establishment indicated that her regular work hours were 5:30 a.m. to 1:00 p.m., Monday through Friday.

In a May 15, 2025 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In response to OWCP's development letter, appellant submitted an April 29, 2025 emergency room discharge summary documenting treatment on that date for a left knee sprain. She also submitted a May 2, 2025 duty status report (Form CA-17) from Linda Sawyer, a registered nurse, providing work restrictions for left knee and hip strains.

In a follow-up letter dated June 18, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the May 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 to the follow-up development letter, appellant submitted medical reports, diagnostic studies, and medical form reports dated April 29 through July 16, 2025 documenting treatment for her conditions.

On July 17, 2025 the employing establishment controverted appellant's claim, asserting that since appellant's injury occurred at 4:35 a.m. on April 29, 2025 and her work shift did not begin until 6:30 a.m. the incident, therefore, occurred outside of the reasonable interval before the start of her official working hours. It noted that while she reported being injured on the employing establishment's premises, an attached statement provided by her supervisor indicated that she was not authorized to be onsite or performing overtime outside of her normal tour of duty.

In an accompanying statement also dated July 17, 2025, appellant's supervisor, M.J., asserted that she did not advise appellant to report to work at 4:30 a.m. on April 29, 2025, as her tour was scheduled for 5:30 a.m. to 1:00 p.m. She further indicated that appellant was not authorized to be on-site or performing overtime outside of her normal tour of duty, noting that appellant's husband drops her off around that time and that the employing establishment police has video of the incident from that date.

In a July 23, 2025 development letter, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor, regarding the factual evidence and circumstances pertaining to the April 29, 2025 traumatic injury claimed to have been sustained in the performance of duty. It requested the employing establishment confirm appellant's work schedule on the date of the injury. OWCP afforded the employing establishment 30 days to respond.

In a July 23, 2025 response, the employing establishment confirmed that appellant's work schedule on the date of injury was 5:30 a.m. to 1:00 p.m., and that her supervisor had not advised her to come into work early on that date. In an accompanying e-mail of even date, appellant's supervisor, M.J., reiterated that she did not advise appellant to come into work at 4:30 a.m. on April 29, 2025, as her normal tour of duty was from 5:30 a.m. to 1:00 p.m. She further reiterated that appellant was not authorized to be onsite or perform overtime hours outside of her normal tour of duty, her husband dropped her off around 4:30 a.m., and the employing establishment police had video of this incident.

On August 12, 2025, appellant contended that her work shift started at 5:00 a.m. on the date she was injured.

By decision dated September 5, 2025, OWCP denied the claim, finding that the claimed injury did not occur in the performance of duty on April 29, 2025, as alleged. It explained that the evidence of record was insufficient to establish that appellant's alleged injury "arose during the course of employment and within the scope of compensable work factors" as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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

³ *Supra* note 1.

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

of and in the course of employment.”⁷ The phrase “in the course of employment” encompasses the work setting, the locale, and time of injury.⁸ 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.⁹ 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.¹⁰ 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.¹¹

The Board has accepted the general rule of workers’ compensation law that, as to employees having fixed hours of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours or at lunch time, are compensable.¹² Given this rule, the Board has noted that the course of employment for employees having a fixed time and place of work includes a reasonable time while the employee is on the premises engaged in preparatory or incidental acts.¹³ However, presence at the employing establishment’s premises during work hours or a reasonable period before or after a duty shift is insufficient, in and of itself, to establish entitlement to benefits for compensability. The claimant must also establish the concomitant requirement of an injury arising out of the employment. This encompasses not only the work setting, but also the causal concept that some factor of the employment caused or contributed to the claimed injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show substantial employer benefit is derived or an employment requirement gave rise to the injury.¹⁴

⁷ *C.L.*, Docket No. 19-1985 (issued May 12, 2020); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

⁸ *L.E.*, Docket No. 22-1282 (issued February 22, 2023).

⁹ *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).

¹⁰ *S.V.*, Docket No. 18-1299 (issued November 5, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

¹¹ *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *M.W.*, Docket No. 15-0474 (issued September 20, 2016); *Mark Love*, 52 ECAB 490 (2001).

¹² See *James P. Schilling*, 54 ECAB 641 (2000). See also *Narbik A. Karamian*, 40 ECAB 617 (1989).

¹³ See *R.W.*, Docket No. 21-1182 (issued April 15, 2022); *J.K.*, Docket No. 17-0756 (issued July 11, 2018); *T.L.*, 59 ECAB 537 (2008).

¹⁴ See *Eileen R. Gibbons*, 52 ECAB 209 (2001). See also *Cheryl Bowman*, 51 ECAB 519 (2000); *Shirlean Sanders*, 50 ECAB 299 (1999); *Charles Crawford*, 40 ECAB 474 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on April 29, 2025, as alleged.

Appellant alleged that her injury occurred on April 29, 2025 at 4:35 a.m. when an unknown man approached her, grabbed her by her legs, and attempted to force her out of her vehicle. Appellant's supervisor, M.J., however, confirmed that her work shift did not begin until 5:30 a.m. and she was not authorized to be at work 55 minutes prior to the start of her shift, or to work overtime hours outside of her normal tour of duty on that date.

Whether an injury occurs in the performance of duty is a preliminary issue addressed before the merits of the claim are adjudicated.¹⁵ The factors considered in determining whether an employee arriving at work is in the performance of duty are whether the injury occurred on the employing establishment's premises, the time interval before the work shift, and the activity at the time of the injury.¹⁶ Appellant has established that she was injured on the employing establishment's premises. However, location alone is insufficient to establish performance of duty. The Board must also consider the time of the injury and whether it arose out of appellant's employment.¹⁷

The case record establishes that the April 29, 2025 incident occurred 55 minutes before the start of appellant's work shift, and she was not authorized, either expressly or impliedly, to be at work at the time of the incident. Thus, appellant has not established that the time between her arrival at work and the start of her regular shift was a reasonable interval.¹⁸ Hence, appellant's injury was outside the scope of employment.¹⁹

As the evidence of record is insufficient to establish an injury in the performance of duty on April 29, 2025 as alleged, the Board finds that appellant has not met her burden of proof.

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.

¹⁵ *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

¹⁶ *E.O.*, Docket No. 19-0390 (issued January 9, 2020).

¹⁷ *L.P.*, Docket No. 17-1031 (issued January 5, 2018); *G.R.*, Docket No. 16-0544 (issued June 15, 2017); *Cheryl Bowman*, 51 ECAB 519 (2000).

¹⁸ *See T.F.*, Docket No. 09-154 (issued July 16, 2009) (The Board found that appellant's presence at the employing establishment's premises 25 minutes prior to the commencement of her work shift did not constitute a reasonable interval under the circumstances).

¹⁹ *See J.D.*, Docket No. 16-0104 (issued April 5, 2016).

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on April 29, 2025, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2026
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