United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 17-1263**
	)	**Issued: December 19, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Denham Springs, LA, Employer	)	

Appearances:
Edward Daniel, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 22, 2017 appellant, through her representative, filed a timely appeal from a May 5, 2017 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.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury on September 18, 2015 in the performance of duty, as alleged.

FACTUAL HISTORY

On September 15, 2016 appellant, then a 46-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that she sustained a fractured disc in her neck and bulging discs in her neck and lower back "causing pain in both arms, shoulders, and legs" as a result of being involved in a motor vehicle accident on September 18, 2015 at approximately 8:15 p.m. She did not stop work. On the reverse side of the claim form, the employing establishment indicated that appellant was in "a motor vehicle accident where she rear-ended someone off duty."

In a September 15, 2016 narrative statement, appellant indicated that she was involved in a motor vehicle accident on September 18, 2015 while in route from dropping off outgoing mail. She stated that she had been told several times during her career that if she was involved in a motor vehicle accident in her own personal vehicle that she would not be covered and did not realized she had a right to file a claim. Appellant later read that a supervisor had been involved in a motor vehicle accident in the scope of their duties and was covered by workers' compensation.

Appellant submitted a duty status report (Form CA-17) dated September 16, 2016 from an unidentifiable healthcare provider who indicated that she had injured her back, neck, bilateral legs, and bilateral arms in a motor vehicle accident on September 18, 2015.

In an October 7, 2016 development letter, OWCP notified appellant of the deficiencies of her claim. It provided a questionnaire and requested medical documentation as to how her injury resulted in her diagnosed conditions. Appellant was afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a limited-duty job offer dated September 23, 2016, which indicated that she worked Mondays, Tuesdays, Thursdays, Fridays, and Saturdays from 9:50 a.m. to 6:50 p.m.

An accident report dated September 18, 2015 indicated that appellant was getting on a ramp at Bluebonnet and picked up speed to enter traffic on the interstate. She stated that "[a]ll of a sudden everyone started slamming on their brakes and stopping." Appellant slammed on her brakes, but could not stop and "hit the car in front of [her]." Her statement was written at 8:45 p.m.

In an October 7, 2016 report, Dr. Chad Domangue, a Board-certified neurologist and pain medicine specialist, diagnosed panniculitis affecting regions of her neck/back, spondylosis without myelopathy or radiculopathy in the cervical region, and other spondylosis of the lumbosacral region. He noted that appellant was involved in a motor vehicle accident in September 2015 and was restrained by a seat belt. Appellant stated that she had to drop mail off at a different office for work and on the way back there was a line of cars for a police escort. She stated that the driver at the front slammed on the brakes, causing all the drivers to disperse, and appellant ran into the

vehicle in front of her because she did not have anywhere to go. Appellant reported that the airbags did not deploy. Dr. Domangue opined that appellant's neck and low back pain was caused by a seat belt injury during the accident.

On October 18, 2016 Dr. Brett J. Chiasson, a Board-certified orthopedic surgeon, noted that appellant was involved in a motor vehicle accident in September 2015 and sustained cervical and lumbar injuries at that time due to her seat belt.

On October 3, 2016 Dr. Leonard Treanor, a Board-certified family practitioner, noted that appellant had been dealing with a great deal of stress since a nondisplaced cervical fracture. He indicated that, during appellant's hospitalization on December 18, 2015 after a cholecystectomy, she was complaining of neck pain. Dr. Treanor also indicated that appellant had decreased range of motion with associated muscle spasms and worsening anxiety secondary to work-related neck injury following a motor vehicle accident.

In an October 4, 2016 narrative statement, appellant indicated that the postmaster falsely stated that she was not on duty at the time of the accident. She stated that she was a supervisor and if a carrier missed the last truck going to the plant at night, she was required to take any mail they brought in to the plant for processing. Appellant attached a map showing her route to the plant and her route to her home with a note that read, "As you can see from the map, my residence is totally in the opposite direction of the plant on Bluebonnet." She indicated that she was on the clock and had not even made it back to the Denham Springs area to start the trip to her residence.

In another narrative statement dated October 18, 2016, appellant indicated that on September 18, 2015 she was in route from dropping off mail at the processing plant located at 8101 Bluebonnet Boulevard when she was involved in a motor vehicle accident. She noted that she had just left the plant and was attempting to enter Interstate 10 to return to the Denham Springs area and continue her route to her residence. As appellant was going up the entrance ramp, a convoy of police units and a hearse were coming down the interstate towards their point of entry. The car at the front of the line of cars on the entrance ramp saw all the police lights and slammed on his or her brakes causing everyone behind the car to scatter to avoid hitting each other. Appellant had nowhere to go and was forced into hitting the car directly in front of her. She immediately called the local police and Postmaster L.V. Appellant stated that L.V. was fully aware that she had just dropped mail off at the plant, was heading back to Denham Springs, and was still on the clock until she completed the trip to the plant and back to Denham Springs. She stated that she was aware that some supervisors clocked out when they reached the plant, but "that would only be half the trip for [her] since [she did] not live in the Baton Rouge area."

On September 23, 2016 the employing establishment controverted appellant's claim. L.V. asserted that appellant had already dropped off mail at 8101 Bluebonnet and was off the clock at the time of the accident. She noted that, therefore, no investigation was conducted on the date of the accident by the employing establishment.

A magnetic resonance imaging (MRI) scan of appellant's cervical spine dated August 31, 2016 revealed nondisplaced fracture left C3 interior articular facet and mild multilevel degenerative changes without high-grade spinal canal or neural foraminal narrowing.

By decision dated November 15, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed injury and/or events occurred on September 18, 2015 in the performance of duty, as alleged.

On December 13, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On January 30, 2017 appellant, through her representative, requested reconsideration.

In an undated witness statement, S.A. stated that she had worked in the employing establishment since September 21, 2002 and it had always been the procedure that all outgoing mail collected that day had to be brought back to the main office as to not delay the mail. She indicated that only the supervisor on duty was supposed to perform such duties.

In an undated witness statement, M.N. indicated that it was mandatory for the closing supervisor to bring all mail collected on the routes by the carriers that missed the last dispatch truck going to the general mail facility.

In an undated narrative statement, appellant stated that she was required to take two copies of an unscheduled collection form to the plant and complete a report called the Collection Point Management System to verify that all collection boxes on the street and in the office had been collected and scanned. If a carrier or clerk missed one of these scans, it was her job to go out and scan the box and collect the mail and bring it to the plant, if the last dispatch truck had already left.

In a January 12, 2017 report, Dr. Chiasson found that appellant had permanent impairment due to multilevel degenerative disc disease of her lumbar spine and disc protrusion of T12-L1, and also a nondisplaced fracture of left C3 interior articular facet after being involved in a motor vehicle accident in September 2015.

On February 7, 2017 appellant, through her representative, requested withdrawal of her request for a review of the written record, and again requested reconsideration.

By decision dated February 10, 2017, OWCP granted withdrawal of appellant's request for review of the written record.

By decision dated May 5, 2017, OWCP denied modification of its prior decision. It found that the evidence of record was insufficient to establish that appellant's injury arose during the course of employment and within the scope of compensable work factors, as appellant had already completed her duties when she dropped off the mail at the Bluebonnet location and was headed home.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim. These elements include the fact that the individual is an

[3] *Id.*

employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty[4] as alleged, and that any disability and/or specific conditions for which compensation is claimed are 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 on a traumatic injury or an occupational disease.[6]

Regarding performance of duty, the Board has recognized, as a general rule that off-premises injuries sustained by employees having fixed hours and places of work while going to or coming from work are not compensable as they do not arise out of and in the course of employment. Such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[7] Certain exceptions to this rule have developed where the hazards of the travel are dependent on particular situations: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency call as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his or her employment, with the knowledge and approval of the employer.[8]

The Law of Workers' Compensation explains that coverage is usually afforded in cases involving a deliberate and substantial payment for the expense of travel, or the provision of an automobile under the employee's control.[9] However, under most circumstances, the travel must be sufficiently important in itself to be regarded as part of the service performed and therefore within the performance of the employee's duties.[10] OWCP's procedures also provide an exception

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[4] The term while in the performance of duty has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation of arising out of and in the course of employment. 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 the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. *Robert W. Walulis*, 51 ECAB 122 (1999). This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury arising out of the employment must be shown and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the 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. *Cheryl Bowman*, 51 ECAB 519 (2000); *Charles Crawford*, 40 ECAB 474 (1989).

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Mary Kokich*, 52 ECAB 239 (2001); *Eileen R. Gibbons*, 52 ECAB 209 (2001).

[8] *Dennis L. Forsgren (Linda N. Forsgren)*, 53 ECAB 174 (2001); *Gabe Brooks*, 51 ECAB 184 (1999); *see Mary Margaret Grant*, 48 ECAB 969 (1997); *see generally* A. Larson, *The Law of Workers' Compensation* § 13.01 (2000) (explaining the coming and going rule).

[9] Larson, *id*. at § 14.07(1) (2000); *see also Mary Margaret Grant*, *id*.

[10] Larson, *id*. at § 14.07(3).

for employees required to travel during a curfew established by local, municipal, county, or state authorities because of civil disturbances or for other reasons.[11]

The Board has also recognized the special errand exception to the going to and coming from work rule. When the employee is to perform a special errand, the employing establishment is deemed to have agreed, expressly or impliedly, that the employment service should begin when the employee leaves home to perform the errand. Ordinarily, cases falling within this exception involve travel which differs in time or route or because of an intermediate stop, from the trip which is normally taken between home and work. In such a case, the hazard encountered in the trip may differ somewhat from that involved in normally going to and returning from work. However, the essence of the exception is not found in the fact that a greater or different hazard is encountered, but in the agreement to undertake a special task. For this reason, coverage is afforded from the time the employee leaves home, even though in time and route the journey may be, in part, identical to that normally followed in going to work.[12]

ANALYSIS

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

Appellant was injured in a motor vehicle accident at approximately 8:15 p.m. on September 18, 2015 while driving her personal vehicle. She was a customer service supervisor at the Denham Springs location of the employing establishment on the date of the accident. Appellant has testified and provided supporting statements from coworkers that she was a supervisor with the employing establishment and that if a carrier missed the last truck going to the plant at night, she was required to take any mail they brought in to the Bluebonnet facility for processing. She also attached a map showing her route to the plant, and her route to her home, with a note that read, "As you can see from the map, my residence is totally in the opposite direction of the plant on Bluebonnet." She indicated that she was on the clock and had not made it back to the Denham Springs area to start the trip to her residence.

In response to statements of the employing establishment, appellant asserted that Postmaster L.V. was fully aware that she had just dropped mail off at the Bluebonnet plant, was heading back to Denham Springs, and remained on the clock until she completed the trip to the plant and back to Denham Springs. She acknowledged that some supervisors clocked out when they reached the Bluebonnet plant, but that was because their commute home did not require a return to the Denham Springs location as Bluebonnet was on their commute home.

The Board finds that the case record as transmitted to the Board is insufficient and would not permit an informed adjudication of the case by the Board. There is insufficient evidence regarding the employing establishment's policy regarding the use of a personal vehicle by a

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.6.f (August 1992). In such cases, the official superior should be requested to submit: (a) the reason the employee was requested to report for duty; (b) whether other employees were given administrative leave because of the curfew; and (c) whether the injury resulted from a specific hazard caused by the imposition of the curfew, such as an attack by rioting citizens.

[12] *C.C.*, Docket No. 18-0445 (issued August 14, 2018); *D.T.*, Docket No. 11-0751 (issued March 12, 2012).

customer support supervisor in transporting mail to another facility and when such an employee was required to clock out. Moreover, the record does not contain the employing establishment's policy regarding appellant's transportation of mail in her personal vehicle. The record does not contain a response from the employing establishment responding to appellant's assertion that in driving to the Bluebonnet location she was driving in an opposite direction from her home, that she would remain on the clock until she returned to Denham Springs, and that her position as a customer support supervisor required her to perform this specific task in situations when mail had not been delivered. OWCP should have attempted to ascertain additional information from the employing establishment regarding whether appellant was required to perform this duty as a part of her employment position and whether there is a policy regarding how such a duty is to be performed and at what point the employee is clocked out.

Accordingly, the May 5, 2017 decision will be set aside and the case remanded for further development including, but not limited to obtaining evidence from the employing establishment regarding its policies on the duties of a customer service supervisor to transport items of mail prior to the end of a workday and whether the employing establishment permitted the use of a personal vehicle to complete such tasks. Personnel records pertaining to whether appellant clocked out at the Bluebonnet or Denham Springs location when performing this employment duty should also be obtained and considered.

Following this and such further development as is deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2017 decision of the Office of Workers' Compensation Programs is set aside and remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: December 19, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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