United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 21-0323**
	)	**Issued: April 18, 2024**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Boise, ID, Employer	)	

Appearances:
Alan J. Shapiro, *Esq.*, for the appellant[1]
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 January 4, 2021 appellant, through counsel, filed a timely appeal from a December 1, 2020 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 his burden of proof to establish a traumatic injury in the performance of duty on February 6, 2020, as alleged.

FACTUAL HISTORY

On February 12, 2020 appellant, then a 57-year-old airway transportation systems specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2020 he sustained left knee and ankle injuries while on temporary duty (TDY) in Oklahoma City, Oklahoma. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured while in the performance of duty.

In February 7, 2020 emergency room and discharge instructions, Dr. Josh McWilliams, a Board-certified emergency room physician, diagnosed left knee strain and left ankle calcaneofibular ligament sprain. Appellant related injuring his left ankle and knee the prior day while playing basketball. Dr. McWilliams detailed examination findings, noting normal range of motion in all extremities, tenderness over left knee lateral joint space and left lateral ankle ligamentous complex, and no obvious left knee or ankle swelling erythema, ecchymosis or cellulitis. He reviewed left ankle and left knee x-rays which showed no acute fracture or dislocation and left knee degenerative changes.

The employing establishment, in a letter dated March 4, 2020, controverted the claim asserting that appellant was not in the performance of duty at the time of injury.

In a development letter dated March 11, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the additional evidence.

In a report dated March 10, 2020, Dr. Michael J. Gustavel, a physician Board-certified in orthopedic sports surgery, related that appellant twisted his left knee and ankle while exercising. He noted that appellant had undergone a left knee arthroscopy meniscectomy five or six years ago and was asymptomatic until February 6, 2020. Dr. Gustavel related appellant's physical examination findings and diagnosed left ankle sprain, left knee pain, and swelling with concern for medial meniscal tear.

In a statement dated March 18, 2020, appellant related that he injured his left knee and ankle at 7:55 a.m. while climbing six flights of stairs to his room from the hotel exercise facility and that at 5:30 p.m. he reinjured his left knee and ankle while shooting basketball in a fitness center. He related that he was on travel status for training from January 24 through February 21, 2020.

In a second development letter dated April 14, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It again advised him regarding the type of medical and factual evidence required to establish his claim. OWCP afforded appellant 30 days to provide the requested information.

In a letter dated April 20, 2020, the employing establishment related that appellant's job was not associated with any physical fitness or medical requirements and he was not participating in a supported or sponsored after-work activity at the time of injury.

By decision dated May 18, 2020, OWCP denied appellant's claim finding that he was not in the performance of duty at the time of his alleged injury on February 6, 2020.

On June 12, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on September 17, 2020. During the hearing appellant testified that his room was on the sixth floor and while exercising in the hotel exercise facility he had returned to his room to retrieve his cellphone. He indicated that he sustained his injury while he was on the stairs. When appellant was finished with training that afternoon, he put a little ice on his knee and ankle and then went to another fitness center to work out as he was feeling better. While playing basketball, he felt his ankle give out and his knee felt funny while jumping. Appellant stated that he was a rescue climber and had to maintain a level of physical fitness, which was the reason he worked out and the employing establishment was aware of this.

By decision dated December 1, 2020, OWCP's hearing representative affirmed the May 18, 2020 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 recognized that FECA covers an employee 24 hours a day when the employee is on travel duty status and engaged in activities essential or incidental to such duties.[7] The general rule regarding coverage of employees on travel duty status or on temporary-duty assignments is that an employee whose work entails travel away from the employer's premises is

[3] *Id.*

[4] *K.R.*, Docket No. 21-0308 (issued May 16, 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] *K.R.*, *id.*; *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] *K.R.*, *id.*; *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).

[7] *K.R., id.*; *D.R.*, Docket No. 16-1395 (issued February 2, 2017); *T.C.*, Docket No. 16-1070 (issued January 24, 2017).

generally considered to be within the course of his or her employment continuously during the trip, except when there is a distinct departure on a personal errand. Thus, injuries flowing from lodging or dining away from home are usually compensable.[8]

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."[9] 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.[10] 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.[11] 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.[12]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on February 6, 2020, as alleged.

As noted above, FECA covers an employee 24 hours a day when the employee is on TDY status and engaged in activities essential or incidental to such duties, unless the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer.[13]

In the present case, appellant's supervisor acknowledged that appellant was injured in the performance of duty on February 6, 2020 while on TDY. Appellant alleged that he injured himself at 7:55 a.m. on the stairs in his hotel. As appellant's activity at his hotel on February 6, 2020 was

[8] *S.T.,* Docket No. 16-1710 (issued September 27, 2017); *B.B.*, Docket No. 14-2000 (issued July 9, 2015).

[9] *See K.R.*, *supra* note 4; *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).

[10] *K.R.*, *id.*; *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).

[11] *K.R.*, *id.*; *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).

[12] *K.R.*, *id.*; *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).

[13] *Supra* note 7.

reasonably incidental to the duties of the temporary assignment contemplated by the employer, the Board finds that appellant was in the performance of duty. Therefore, the case shall be remanded to OWCP for further development, to determine whether he sustained an injury causally related to the accepted February 6, 2020 employment incident. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on February 6, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2020 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 18, 2024
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