

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

N.R., Appellant)	
)	
and)	Docket No. 24-0118
)	Issued: April 24, 2024
U.S. POSTAL SERVICE, HIGHLAND POST)	
OFFICE, Fall River, MA, Employer)	
)	

Appearances:
David J. Barbuzzi, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 21, 2023 appellant filed a timely appeal from an August 11, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 in the performance of duty on April 25, 2022, as alleged.

FACTUAL HISTORY

On May 22, 2022 appellant, then a 37-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2022 at 8:00 a.m. she sustained a concussion while in the performance of duty. She reported that upon arriving to work she opened the trunk of her personal vehicle and, while reaching to retrieve her satchel, the lift gate struck her in the forehead. On the reverse side of the claim form, B.L., appellant's manager, challenged the claim, contending that appellant was not injured in the performance of duty. She noted that appellant arrived at work in her personal vehicle, with her partner driving. B.L. advised that the employee stated that she was arguing with her partner and hastily tried to grab items from the back of the vehicle and was struck in the head as the rear door was opening. She did not provide appellant's regular work hours or regular schedule. Appellant stopped work on April 25, 2022 and returned on April 29, 2022.

On April 25, 2022 Eleanor Taylor, a nurse practitioner, treated appellant and diagnosed injury of frontal region of head, initial encounter, and concussion.

On May 9, 2022 Dr. Uma Kolli, a Board-certified family practitioner, treated appellant and excused her from work from May 2 through 9, 2022.

In a development letter dated May 27, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish the claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. On April 25, 2022 Kayla Pavao, a nurse practitioner, treated appellant for a head injury sustained earlier that day. She reported striking the front portion of her forehead when opening the trunk of her car and experienced blurred vision, dizziness, nausea, and headache. Ms. Pavao diagnosed injury of frontal region of head, initial encounter, and concussion.

A computerized tomography (CT) scan of the head dated April 25, 2020 was negative. A CT scan of the head dated May 30, 2022 revealed no evidence of acute intracranial pathology.

In a March 30, 2022 emergency room report, Jennifer Cores, a nurse practitioner, noted that appellant related complaints of a headache, increased difficulty with concentration, nausea, and vomiting related to an April 25, 2022 incident. She provided examination findings and diagnosed headache.

Appellant signed a statement of certification on the OWCP questionnaire on June 6, 2022; however, she did not respond to the questions posed.

In a June 10, 2022 statement, appellant indicated that on April 25, 2022 at 8:00 a.m. she was dropped off by her partner in the employing establishment parking lot. She reported retrieving her work gear from her vehicle when she was stuck in the head by the trunk. Appellant indicated that she did not have a locker at work to store her gear because she worked throughout all five stations and could be assigned to a different station daily. After the incident she noted entering the building and going to the bathroom where she saw a large bump on her forehead. Appellant explained that she felt fine and continued to work. She advised that approximately 45 minutes later, she began to feel dizzy, nauseous, and faint and informed her supervisor of her injury. Her supervisor instructed her to go to the hospital to be evaluated. Appellant was then treated at the hospital and diagnosed with a concussion.

By decision dated July 8, 2022, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the employment incident occurred as described. Specifically, it noted that, as she had failed to respond to its development questionnaire, there was insufficient evidence to establish the injury or event occurred.

OWCP received additional evidence. On June 28, 2022 appellant sought treatment from Ms. Taylor, to obtain medical clearance to return to work. She reported sustaining a concussion at work on April 25, 2022 and indicated that her symptoms resolved and she only experienced intermittent headaches. Ms. Taylor noted a clinical impression of headache and returned appellant to work.

On May 17, 2023 appellant requested reconsideration.

In an October 12, 2022 response to OWCP's development letter, appellant indicated that on April 25, 2022 she was dropped off in the employing establishment parking lot by her partner in her personal vehicle. She reported carrying work gear required to perform her job as a city letter carrier assistant. Appellant related that the trunk of the vehicle opened vertically on hydraulic plungers and she bent over to grab her gear when the bottom rim of the trunk door came down and struck her in the right forehead. She indicated that although she did not experience immediate pain, she knew that she hit her head "pretty good." Appellant reported that approximately 45 minutes after the incident, while sorting mail, she began to experience dizziness, headaches, and nausea and proceeded to the bathroom to wash her face. She noted that her symptoms did not improve so she informed her manager of the injury and was instructed to go to the hospital for evaluation. Appellant proceeded to the hospital and was diagnosed with likely concussion. She explained that she was assigned duties in five different physical workstations over multiple zip codes. Appellant noted that, because she worked in multiple locations over the workweek, she did not have a personal locker and would carry her gear with her daily. She provided a diagram of the parking lot.

Appellant submitted a statement from L.A., her partner, dated November 6, 2022, who noted dropping her off at work in the employing establishment parking lot on April 25, 2022. She indicated that appellant entered the trunk of her vehicle to obtain her work gear. L.A. noted that although she did not witness the trunk hit appellant's head, she heard her state: "what the expletive." She related that appellant then reported that the trunk hit her in the head, but she was okay.

On November 8, 2022 Dr. Kolli noted that appellant was evaluated on April 28, 2022 and diagnosed with a concussion.

By decision dated August 11, 2023, OWCP modified the July 8, 2022 decision, finding that appellant had established that the employment incident occurred as alleged. However, the claim remained denied as she had not established that the April 25, 2022 traumatic injury occurred in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period 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 phrase “sustained while in the performance of duty” has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”⁷ To arise 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 the master’s business; (2) at a place when 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.⁸ In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.⁹

³ 5 U.S.C. § 8101 *et seq.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 *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).

⁹ *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).

ANALYSIS

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

Whether an injury occurs in the performance of duty is a preliminary issue to be addressed before the remaining merits of the claim are adjudicated.¹⁰ Appellant indicated on her May 22, 2022 claim form that, at 8:00 a.m. upon arriving to work she opened the trunk of her personal vehicle and, while reaching to retrieve her satchel, she was struck in the forehead by the lift gate, causing a concussion. She described the same circumstances in a statement dated June 10, 2022. On the reverse side of the claim form, appellant's manager did not note appellant's regular work hours or regular work schedule. She indicated that appellant was not injured in the performance of duty. The manager noted that appellant arrived at work in her personal vehicle with her partner driving. She related that appellant was arguing with her partner and hastily tried to grab items from the back of the vehicle. Appellant was struck in the head as the rear door was opening.

In a May 27, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. It did not, however, send a development letter to the employing establishment asking it to provide further specific information about the factual aspects of appellant's claim.

OWCP's procedures recognize that in certain types of claims, such as a claim which involves a performance of duty issue as to whether the alleged injury occurred on premises, a statement from the employer is imperative to properly develop and adjudicate the claim.¹¹ Although it is appellant's burden to establish his claim, OWCP is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹²

The Board finds that OWCP did not request that the employing establishment provide a statement regarding the performance of duty issue involved in this claim. The case must, therefore, be remanded to OWCP to obtain additional information from the employing establishment, including a description of the physical location of the alleged injury and whether the site of the alleged injury was on the employing establishment's premises. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹³

¹⁰ *S.T.*, Docket No. 20-0388 (issued September 16, 2020); *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011); *P.S.*, Docket No. 15-1672 (issued December 7, 2015).

¹² *C.F.*, Docket No. 18-1607 (issued March 12, 2019); *D.M.*, Docket No. 14-0460 (issued February 11, 2016); *C.S.*, Docket No. 14-1994 (issued January 21, 2015).

¹³ *E.K.*, Docket No. 21-0436 (issued February 21, 2023); *L.B. (R.V.)*, Docket No. 15-0905 (issued September 19, 2016).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2023 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: April 24, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board