United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 24-0490**
	)	**Issued: June 7, 2024**
DEPARTMENT OF DEFENSE, DEFENSE COUNTERINTELLIGENCE & SECURITY AGENCY, Quantico, VA, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 8, 2024 appellant filed a timely appeal from a March 27, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on May 12, 2023, as alleged.

FACTUAL HISTORY

On November 22, 2023 appellant, then a 60-year-old program assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2023 at 6:10 a.m. she sustained a contusion of

[1] 5 U.S.C. § 8101 *et seq.*

the left big toe and right rib while in the performance of duty. She reported walking on the employing establishment sidewalk that was unlevel when her ankle gave out and she fell into a barrier. Appellant did not immediately stop work. On the reverse side of the claim form the employing establishment indicated that appellant was not injured in the performance of duty. It noted that her ankle was unstable, and she stumbled when exiting the shuttle bus outside the work facility. The employing establishment indicated that the incident happened prior to appellant entering the facility, and prior to the start of her day. It listed her regular work hours as 6:00 a.m. to 2:30 p.m., Monday through Friday. L.A., appellant's supervisor, noted that appellant's typical work hours were 6:00 a.m. to 2:30 p.m.; however, when she worked at the alternate duty location as she did on May 12, 2023, her start time fluctuated between 6:00 a.m. and 6:15 a.m. She noted that the duty location was a developed underground mine with parking outside the mine. L.A. indicated that on the day of the injury appellant had not begun her workday. She noted that appellant rode the shuttle bus from the parking lot to the security entrance, and upon existing the bus her foot and ankle were unstable, and she stumbled into a large plastic barrier that was adjacent to the walkway.

In a form statement dated May 12, 2023, appellant noted that while walking on a sidewalk at work her ankle gave out. She was unsure if the concrete was uneven in that location, and noted that the barrier saved her from falling. Appellant injured her right and left chest area, left hand, and big toe.

On May 12, 2023 Michelle Ross, a nurse practitioner, reported that appellant sustained an injury to her right lower rib and upper abdomen, and recommended she be treated by her primary care physician.

OWCP received receipts for appellant's treatment at an immediate care facility on May 15, 2023.

In an incident report dated May 22, 2023, appellant indicated that on May 12, 2023 at 6:12 a.m. her ankle was unstable, and she stumbled and fell into an orange barrier while at work. She sustained bruises, and her supervisor recommended that she be evaluated by the employing establishment nurse. Appellant described the circumstances surrounding her injury, and noted that she waited for the shuttle bus in the parking area, and was transported to security where she walked approximately 75 feet, and her ankle either gave out or she stepped on uneven concrete and fell into an orange barrier. She emailed her supervisor on May 12, 2023, and reported that at 6:12 a.m. she stumbled on the sidewalk while walking to the guard house. Appellant indicated that she did not hit her head, but caught herself on the barrier and bruised the left side of her chest area, right rib, left wrist, and big toe. She reported that she was treated by the employing establishment nurse who suggested she follow up with her primary care provider. Appellant subsequently departed for vacation in Florida, and after arriving at her destination she continued to experience rib pain, and sought treatment at an immediate care facility. She underwent x-rays of her ribs, which did not reveal a fracture and received an injection for pain. Appellant indicated that she paid for her medical care.

OWCP received a position description for a program assistant.

In a development letter dated December 5, 2023, OWCP notified appellant of the deficiencies of her claim. It advised her of the factual and medical evidence necessary to establish the claim, and attached a questionnaire for her completion. OWCP afforded her 60 days to respond.

In a January 3, 2024 response to OWCP's development letter, appellant explained that on May 12, 2023 at 5:45 a.m. she walked through security at work on a temporary sidewalk because repairs were being done on the main sidewalk. She noted that she walked on an uneven area of the sidewalk, and her ankle gave out and she stumbled into the barrier alongside of the sidewalk. Appellant continued into the security area, and then returned to the bus to be dropped off at her office door to report for work. She reported her injury to her supervisor and was treated by the nurse at the employing establishment. Appellant noted that she had a large bruise under her right breast. She noted that she was only working four hours that day because she was leaving for vacation. While on vacation in Florida appellant sought treatment at an immediate care facility, and she had x-rays of her ribs and an injection for pain. She paid for her medical care. Appellant indicated that she sought reimbursement for her treatment and prescriptions.[2]

In a development letter dated January 4, 2024, OWCP requested additional information from the employing establishment, including details about the parking lot where appellant was injured. It afforded 30 days to respond.

In a follow-up January 4, 2024 letter, 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 its December 5, 2023 letter to submit the requested supporting evidence. No additional evidence was received.

In response to OWCP's development letter, on January 4, 2024, the employing establishment responded, "No" to the question about whether, at the time of the alleged injury, appellant was on premises, which were owned, operated, or controlled by the employing establishment. It noted that appellant's incident occurred in the parking lot area of the alternate duty location when the employee was making her way from her parked vehicle to the security entrance, and she had not entered the security entrance or badged into the facility. The employing establishment responded "N/A" to the request for a diagram of the boundaries of the premises and location of the injury site. It further responded to the question of whether the injury occurred more than 30 minutes outside the employee's usual work hours, "N/A. This happened within 30 minutes of the employee's usual start time." The employing establishment responded to the question about whether appellant was engaged in official duties, which required her to be off premises, "No. This happened when the employee was making her way from her parked vehicle to the security entrance; prior to the start of her workday."

By decision dated February 8, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence was insufficient to establish a medical diagnosis in connection with the accepted May 12, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

[2] She reported that she was terminated from her federal employment on December 14, 2023.

On May 15, 2023 Dr. Robert Siegel, a Board-certified internist, treated appellant for injuries sustained after a fall while walking into work. Appellant reported that on May 12, 2023 at 6:12 a.m. she fell while going into work. She reported sustaining a large bruise on her left chest wall with persistent worsening pain. Dr. Siegel diagnosed work accident, rib pain, pleurodynia, fall from slipping, tripping, or stumbling, contusion of the thorax, unspecified, and rib contusion. He noted that x-rays of the ribs were normal.

On March 25, 2024 appellant requested reconsideration.

By decision dated March 27, 2024, OWCP modified the February 8, 2024 decision to find that appellant had submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. However, the claim remained denied as 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. Specifically, it found that the parking lot where she was injured was not part of the employing establishment's premises, and the parking lot was not owned, controlled, or managed by the employing establishment.

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 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] The phrase "in the course of employment" is recognized as related to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise "in the course of employment," in general, an injury must occur: (1) at a time when the employee may reasonably be 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 his or her employment;

[3] *Id*.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *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).

and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[8]

It is well established as a general rule of workers' compensation law that, under the premises doctrine, off-premises injuries sustained by employees having fixed hours and places of work while going to or from work or during a lunch period, are not compensable, as they do not arise out of and in the course of employment. Rather, such injuries are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers, subject to certain exceptions.[9]

Exceptions to the premises doctrine have been made to protect activities that are so closely related to the employment itself as to be incidental thereto,[10] or which are in the nature of necessary personal comfort or ministration.[11] One of these exceptions is the proximity exception to the premises rule, which allows constructive extension of the premises to those hazardous conditions which are proximate to the premises and may, therefore, be considered as hazards of the employment.[12] The Board has determined that underlying the proximity principle is the principle that course of employment should extend to any injury that occurred at a point where the employee was within the range of dangers associated with the employment.[13] This exception has two components. The first is the presence of a special hazard at the particular off-premises point. The second is the close association of the access route with the premises, so far as going and coming is concerned.[14]

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.[15] On her Form CA-1 appellant has alleged that on May 12, 2023 she was walking on the employing establishment sidewalk that was unlevel, and her ankle gave out and she fell into a barrier. The employing establishment has

[8] *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).

[9] *V.P.*, Docket No. 13-0074 (issued July 1, 2013); *M.L.*, Docket No. 12-0286 (issued June 4, 2012); *John M. Byrd*, 53 ECAB 684 (2002).

[10] *M.T.*, Docket No. 17-1695 (issued May 15, 2018).

[11] *J.L.*, Docket No. 14-368 (issued August 22, 2014).

[12] *K.D.*, Docket No. 18-0617 (issued February 13, 2019); *D.K.*, Docket No. 11-1029 (issued February 1, 2012).

[13] *J.K.*, Docket No. 17-0756 (issued July 11, 2018); *Eugene G. Chin*, 39 ECAB 598 (1988).

[14] *B.H.*, Docket No. 14-0829 (issued July 8, 2015).

[15] *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).

contended that appellant was not injured in the performance of duty because she was off duty at the time of the injury, and was not on the employing establishment's premises.

In determining whether appellant's injury in the parking lot area of the facility when the employee was making her way from her parked vehicle to the security entrance on the sidewalk occurred while in the performance of duty, the Board must first consider the factors necessary to determine whether the parking area that appellant was enroute to should be considered part of the employing establishment's premises.[16] The Board has held that factors, which determine whether a parking area used by employees may be considered a part of the employing establishment's premises include whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces in the garage were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot, and whether other parking was available to the employees. The premises doctrine is applied to those cases where it is affirmatively demonstrated that the employing establishment owned, maintained, or controlled the parking facility, used the facility with the owner's special permission, or provided parking for its employees.[17]

In a January 4, 2024 development letter, OWCP requested additional factual information from the employing establishment with regard to whether appellant was in the performance of duty when injured on May 12, 2023, including specific questions about the premises where the injury occurred. While the employing establishment responded to OWCP's development letter, it provided only brief answers to OWCP's questions without sufficient explanation. For example, it simply responded "No" to the question of whether the premises were owned, operated, or controlled by this employing establishment. It noted that appellant's mishap occurred in the parking lot area of the facility when the employee was making her way from her parked vehicle to the security entrance, and she had not entered the security entrance or badged into the facility. The employing establishment provided no further explanation regarding who owned or maintained the parking lot or premises, or whether it contracted for the exclusive use of the parking lot. It did not address whether employees were required to park in this parking lot, and if other options were available if an employee wished to pay for parking. The employing establishment did not elaborate on the location, usage, and access of the other parking lots. Despite receiving a response from the employing establishment, which did not fully answer the posed questions, OWCP did not conduct

[16] *See R.E.*, Docket No. 18-0515 (issued February 18, 2020) (the Board first considered whether the parking area that appellant was walking from was considered part of the employing establishment's premises before it considered whether the crosswalk between the parking area and the workplace should be considered part of the employing establishment's premises); *see also S.V.*, Docket No. 18-1299 (issued November 5, 2019) (the Board first considered whether a satellite parking lot was considered on the employing establishment's premises before it considered whether an injury that occurred while the employee stepped off a transport bus had occurred on the employing establishment premises).

[17] *C.D.*, Docket No. 20-1174 (issued June 11, 2021); *see also R.M.*, Docket No. 07-1066 (issued February 6, 2009); *Diane Bensmiller*, 48 ECAB 675 (1997); *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991); *Edythe Erdman*, 36 ECAB 597 (1985); *Karen A. Patton*, 33 ECAB 487 (1982).

any further development of the evidence before it issued its decision.[18] The Board finds, therefore, that OWCP did not properly develop the evidence with respect to whether appellant's slip-and-fall injury occurred on the employing establishment's premises.[19]

The Board further finds that OWCP did not make adequate findings of fact regarding whether the alleged May 12, 2023 injury occurred within a reasonable interval before appellant's work shift. It is well established that within the performance of duty includes a reasonable time before and after work to allow for coming and going.[20] In this case, appellant's regular work hours when at this facility started from 6:00 a.m. to 6:15 a.m. and her fall occurred at 6:10 a.m. The employing establishment has asserted that appellant was not in the performance of duty at the time of her fall injury because she had not entered the security entrance or badged into the facility. The Board finds, however, that the evidence of record is unclear regarding when appellant clocked into work and whether she was on duty at the time of the fall injury. OWCP did not request any information from the employing establishment regarding the circumstances surrounding when appellant's work shift began on May 12, 2023.[21] Accordingly, the case must be remanded for further factual development in order for the Board to determine a "reasonable interval" before appellant's work shift on May 12, 2023.

Proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[22] It has an obligation to see that justice is done.[23] OWCP procedures further provide that it should obtain relevant information, including relevant diagrams, from an official superior if it requires clarification before determining whether the employee was on the premises.[24] As OWCP failed to request all the information as required under its procedures, the Board shall remand the case for further development.[25]

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[18] *See G.R.*, Docket No. 18-1490 (issued April 4, 2019).

[19] *See S.V., supra* note 15 (case was remanded for OWCP to obtain additional information from the employing establishment regarding whether a satellite parking lot was considered on the premises of the employing establishment).

[20] *C.L.*, Docket No. 18-0812 (issued February 22, 2019); *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

[21] *See S.M.*, claiming as son of *J.M.*, Docket No. 16-1725 (issued May 11, 2017) (Board remanded the case for OWCP to obtain additional information from the employing establishment regarding why appellant remained at work after his work shift ended).

[22] *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

[23] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[24] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4d, f, and g (August 1992); *see also L.P.*, Docket No. 17-1031 (issued January 5, 2018).

[25] *See R.H.*, Docket No. 20-1011 (issued February 17, 2021).

On remand, OWCP shall obtain further information from the employing establishment regarding whether appellant was injured in the performance of duty on May 12, 2023. This shall include whether the employing establishment contracted for the exclusive use by its employees of the parking area or premises, whether parking spaces in the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot, and where other parking was available to the employees. The employing establishment shall also be asked to address whether the sidewalk on which appellant fell was owned, controlled, or maintained by the employing establishment,[26] used exclusively or principally by employees of the employing establishment for the convenience of the employer,[27] whether the shuttle bus was owned, controlled, or maintained by the employing establishment, and whether the sidewalk was a necessary point of ingress/egress.[28] Lastly, the employing establishment shall provide additional information regarding when appellant's work shift began on May 12, 2023. Following this and other such development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's traumatic injury claim.

CONCLUSION

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

[26] *See J.K.*, Docket No. 17-0756 (issued July 11, 2018) (the Board found that an employee who slipped on ice on the sidewalk in front of the employing establishment's door was not within the performance of duty because the rental lease showed that the employing establishment leased the property from a private owner who was responsible for maintaining the property space).

[27] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004) (the Board found that an employee's slip-and-fall injury on a public sidewalk while walking from a parking lot to the employing establishment did not occur in the performance of duty as the employee did not establish that the sidewalk on which she fell was used exclusively or principally by the employees of the employing establishment).

[28] *See J.D.*, Docket No. 16-0104 (issued April 5, 2016) (OWCP had found that an employee who slipped and fell on a sidewalk while leaving the parking lot to his duty station was within the performance of duty because the walkway between the parking lot and the employee's duty station was a necessary point of ingress/egress).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2024 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: June 7, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board