

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

D.L., Appellant)	
)	
and)	
)	
DEPARTMENT OF AGRICULTURE, ANIMAL)	Docket No. 22-1043
AND PLANT HEALTH INSPECTION)	Issued: May 28, 2024
SERVICE, VETERINARY SERVICES,)	
Gainesville, FL, Employer)	
)	

Appearances:
Wayne Johnson, Esq., 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 5, 2022 appellant, through counsel, filed a timely appeal from a January 7, 2022 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 a traumatic injury on May 29, 2020, while in the performance of duty, as alleged.

FACTUAL HISTORY

On June 7, 2020 appellant, then a 65-year-old human resources clerk, filed a traumatic injury claim (Form CA-1) alleging that, while teleworking on May 29, 2020, she shattered her patella when she slipped and fell as she returned to her desk after going outside in the rain to obtain the odometer reading from her vehicle. She landed on her left knee with her full weight. Appellant explained that her shattered patella required surgery. On the reverse side of the claim form, appellant's supervisor, C.W., contended that appellant was not injured in the performance of duty. Appellant stopped work on May 29, 2020.

In a June 24, 2020 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 30 days to respond.

On July 6, 2020 appellant responded to OWCP's development questionnaire, explaining that she had an approved reasonable accommodation to work from home. While working from home on the date of injury, she received a telephone call from her bank requesting the odometer reading off the vehicle she had just purchased. Appellant noted that she had not yet taken a 15-minute break, so she went out to her vehicle to obtain the requested information. It was raining and, after she hung up the telephone, she turned and headed back to continue working, but slipped on the garage floor and fell with her full weight onto her left kneecap, breaking her patella.

By decision dated July 29, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not met her burden of proof to establish an injury in the performance of duty on May 29, 2020.

On July 29, 2021 appellant, through counsel, requested reconsideration. She argued that she was on a recognized break when she went to get the odometer reading from the car she used for daily work errands and that her telework status did not change the compensability standard.

In an August 20, 2021 email, C.W. confirmed that appellant had been working from home, pursuant to a reasonable accommodation, at the time of the incident. She stated that there were no special directives given to appellant regarding working from home, taking breaks, going on mail runs, or stopping at the office to pick up forms, folders, or packages. C.W. noted that she trusted her to run these errands when necessary and did not ask her to call each time she had to drive to and from the office, post office, or UPS drop off location. Appellant's duties included running these errands while on official duty using her own vehicle. C.W. further noted that she kept her personal vehicle in a garage attached to her house, which is where she slipped and fell during work hours.

Appellant also submitted an October 1, 2021 declaration in which she described these errands in greater detail, stating that she was on the clock the entire time she drove to and from the office and UPS and while picking up and mailing forms and tags used to import animals. She used her vehicle every day to run these errands and asserted that having the vehicle was an essential

part of her job. Appellant added that, in the past, she had used her vehicle to travel to conferences for work and had been reimbursed by the employing establishment for such travel. She had recently purchased a vehicle to use for work when, on May 29, 2020, her bank called to request information for the financing of the car. Appellant was obtaining that information when she was injured.

In a letter dated December 7, 2021, OWCP requested that the employing establishment provide additional information, including a specific explanation regarding whether appellant was performing assigned duties or activities reasonably incidental to her employment at the time of the incident.

In response to OWCP's inquiry, an employing establishment official, E.F., responded on December 16, 2021 noting that, based on appellant's July 6, 2020 statement, appellant was injured while taking a break in her own home. He asserted that the agency had not directed her to retrieve the mileage reading of her newly purchased vehicle, and thus she was not in the performance of duty when she fell. E.F. also attached a copy of C.W.'s August 20, 2021 email statement.

By decision dated January 7, 2022, OWCP affirmed its July 29, 2020 decision.

LEGAL PRECEDENT

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment.⁴

In order to be covered under FECA, an injury must occur at a time when the employee may reasonably be stated to be engaged in his or her master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of employment or engaged in doing something incidental thereto.⁵

OWCP's procedures address off-premises injuries sustained by workers who perform service at home. It provides:

Ordinarily, the protection of [FECA] does not extend to the employee's home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employer. The official superior should be requested to submit a statement showing:

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;

³ 5 U.S.C. § 8102(a).

⁴ See *M.S.*, Docket No. 18-0465 (issued August 1, 2018).

⁵ *A.C.*, Docket No. 17-1927 (issued April 12, 2018).

- (b) The particular work the employee was performing when injured; and
- (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion.⁶

OWCP's procedures further provide that if the statements are not "sufficiently detailed or are otherwise insufficient to permit a proper determination, additional statements should be obtained from others in a position to know the circumstances."⁷

ANALYSIS

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

Appellant alleged that she slipped and fell in her garage when she went to retrieve the odometer reading requested by her bank in order to finance her newly purchased car. She asserted that she used the car for work on a daily basis and that having a car was an essential part of her job.

OWCP requested that the employing establishment address whether appellant was performing her assigned duties or activities reasonably incidental to her employment at the time she slipped and fell. The employing establishment provided contradicting statements. In an August 20, 2021 email, C.W., appellant's supervisor, responded affirmatively that appellant's work duties required her to frequently use her car while on official duty, without special directives, and that appellant fell during work hours on May 29, 2020. However, in a December 16, 2021 statement, E.F., an employing establishment official, asserted that because the employing establishment had not directed appellant to retrieve her mileage reading and because she was on a break at the time, she was not in the performance of duty.

As OWCP failed to request all the information necessary to determine whether appellant was in the performance of duty, the case must be remanded for further development of the claim.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.⁸

Accordingly, the Board will remand the case for OWCP for further development regarding whether appellant was in the performance of duty when injured on May 29, 2020. On remand, OWCP shall obtain information from the employing establishment regarding whether appellant was performing assigned duties or activities reasonably incidental to her employment at the time of the incident. This shall include whether appellant was required to have a personal car for her employment duties, how often she used it for work, and whether the employing establishment

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *see also M.T.*, Docket No. 17-1695 (issued May 15, 2018).

⁷ Federal (FECA) Procedure Manual, *id.* at Chapter 2.804.5(f)(3).

⁸ *A.M.*, Docket No. 18-0630 (issued December 10, 2018).

provided any funds or reimbursement for the purchase, maintenance, or use of the car, including fuel and mileage. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 28, 2024
Washington, DC

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

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

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