United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 24-0799**
	)	**Issued: November 1, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 31, 2024 appellant filed a timely appeal from a May 20, 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that an injury occurred in the performance of duty on September 6, 2023, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the May 20, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On September 10, 2023 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2023 he injured his head due to heat exhaustion while in the performance of duty. On the reverse side of the claim form S.B., an employing establishment supervisor, controverted the claim, contending that he was not in the performance of duty. He noted that a manager walked with appellant on his route that day and he never provided a statement or mentioned that anything was wrong with him. S.B. related that the following morning appellant sent a text message to the manager asserting that he had fallen at home and hit his head. He stopped work on the date of the alleged injury and returned to work on September 18, 2023.

In an emergency room note dated September 6, 2023, Dr. Angela Ugorets, a Board-certified emergency medicine specialist, diagnosed laceration of scalp and unspecified syncope. She noted that appellant had undergone a computerized tomography (CT) scan of the head and laceration repair. In a note dated September 7, 2023, Dr. Ugorets released appellant to return to work, effective September 10, 2023.

In a September 18, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 60 days to submit the necessary evidence.

OWCP thereafter received a September 6, 2023 CT scan, which noted a "large scalp laceration in the right frontal region" and was negative for any acute intracranial abnormality.

In a duty status report (Form CA-17) dated September 15, 2023, Dr. Susan Leath, a Board-certified family medicine specialist, diagnosed "head injury laceration" due to "heat exhaustion." She released appellant to return to full-duty work, effective September 18, 2023.

In an October 3, 2023 medical report, Dr. Leath noted a "reason for visit" of syncope. She diagnosed laceration without foreign body of other part of the head, dehydration, and unspecified injury of head. In an attached letter, Dr. Leath indicated that appellant became dehydrated at work on September 6, 2023, and had passed out and fallen at home that evening while getting out of the shower, injuring his forehead and requiring sutures. She opined that "[i]t was concluded to be heat exhaustion and dehydration."

In an attending physician's report (Form CA-20) also dated October 3, 2023, Dr. Leath diagnosed head injury, laceration of head, and dehydration. She noted a history that appellant arrived home from work, took a shower, and then subsequently passed out. Regarding whether the diagnosed conditions were caused or aggravated by an employment related activity, Dr. Leath noted "presumably dehydrated with heat exhaustion after work."

In a November 12, 2023 response to OWCP's questionnaire, appellant indicated that on September 6, 2023 he was delivering mail, accompanied by an office manager for an audit, in extreme heat. He noted that he experienced "overwhelming sweating" and "consumed three electrolyte tabs dissolved in water to recover, while on lunch break, and continued delivery of postal matter until 5:00 p.m. end of shift." Appellant also noted that it was the hottest day of the

year and that his wife observed that he was "not talking in an understanding manner when I called supervisor on duty at 6:00 p.m." He indicated that within an hour after his shift, he "exited the bathtub shower, trying to cool body temperature down" and passed out and hit his head "on a hard surface causing large laceration on head when I woke up, my wife found me on the floor and administered recovery assistance and drove me to the [emergency room]."

By decision dated November 28, 2023, OWCP found that the evidence did not establish that his diagnosed conditions were causally related to the accepted September 6, 2023 employment incident. Consequently, it concluded that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

On March 11, 2024 appellant requested reconsideration of OWCP's November 28, 2023 decision.

In support of the request, appellant submitted a February 8, 2024 narrative report by Dr. Leath who noted that appellant related that on September 6, 2023 temperatures may have risen to 102 degrees, and that he had never passed out before. Dr. Leath indicated that he worked his regular schedule from 8:30 a.m. to 5:30 p.m., consumed electrolyte tabs with water during his lunch break, and felt dizzy and fatigued at the end of his shift and was sweating a lot. She also noted that appellant related that he arrived home at 6:00 p.m., took a shower 15 minutes after arriving home, had a syncopal episode, and was seen at the emergency room. Dr. Leath opined that "this is a direct correlation to his job and the events thereof. The syncope was due to the work environment." She diagnosed heat syncope, dehydration, injury of head, and laceration of scalp.

In a September 6, 2023 emergency department provider report, Dr. Ugorets noted that appellant presented with a right forehead laceration following a syncopal when he was getting out of the bathtub and hit his head on a sink. She also noted that he had delivered mail in 95-degree heat. A physical examination revealed a 10-centimeter-deep laceration on the right aspect of the forehead. Dr. Ugorets opined "differential diagnoses include most likely syncope due to heat exhaustion and or just getting out of a hot bath *versus* orthostatic syncope *versus* arrhythmia *versus* electrolyte derangement *versus* anemia *versus* low concern for seizure."

A report of electrocardiogram (ECG) dated September 7, 2023 was normal.

In a September 15, 2023 medical report, Dr. Leath diagnosed laceration without foreign body of other part of head and unspecified injury of head.

By decision dated May 20, 2024, OWCP affirmed the prior decision, as modified, to reflect denial based on performance of duty. It found that appellant was injured at home while exiting his shower and therefore the activity he was engaged in at the time of his injury was not directed to the actual performance of the duties of his federal employment. OWCP noted that the employing establishment controverted the claim because appellant did not indicate anything was wrong to the manager who walked his route with him that day. It further noted that Dr. Leath did not provide a rationalized medical opinion explaining how his work caused heat exhaustion or his syncopal episode.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[3] 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.[4] 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.[5]

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."[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 relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master's business, at a place where the employee may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[8] This alone is insufficient 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.[9]

Its procedures provide that ordinarily, the protections of FECA[10] do not extend to the employee's home, but there is an exception when the injury is sustained while the employee is

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

[6] 5 U.S.C. § 8102(a).

[7] *See D.L.*, Docket No. 19-0276 (issued April 20, 2020); *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[8] *See M.T., id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

[9] *See M.T., id.*; *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[10] *Supra* note 1.

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 benefit of the employer.[11]

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on September 6, 2023, as alleged.

Appellant alleged that he sustained a head injury when he fell while exiting his shower at home. In his Form CA-1 and response to OWCP's questionnaire, he listed "heat exhaustion" as the cause of the fall. At the time of the fall, however, appellant was not engaged in an activity essential to his employment or reasonably incidental to the duties that he was hired to perform.[13] The Board thus finds that the injury he sustained did not occur in the performance of his federal employment duties.

For these reasons, the Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on September 6, 2023, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on September 6, 2023, as alleged.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5f(1) (August 1992); *see also M.T.*, Docket No. 16-0927 (issued February 13, 2017); *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

[12] *See A.S.*, Docket No. 17-1880 (issued December 12, 2018); *T.C.*, Docket No. 16-1070 (issued January 24, 2017).

[13] *Id.*; *see also P.B.*, Docket No. 21-0667 (issued March 3, 2022).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2024
Washington, DC

Alec J. Koromilas, 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