

File Number:
HR11-D-H

U.S. DEPARTMENT OF LABOR

DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injury:
Employee:

Dear :

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the Office has been vacated and returned to the office for further action as explained in the attached Remand Order.

Your case file has been returned to your assigned Claims Examiner. You may contact that office by writing to our Central Mail Room at the following address:

Sincerely,

PAUL H FELSER
ATTORNEY
FELSER LAW FIRM, PC
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, January 22, 2021

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of
Claimant; Employed by the Case No.

Merit consideration of the case file was completed in Washington, DC. Based on this review, the decision of the Office is vacated for the reasons set forth below.

The issue for consideration is performance of duty.

The claimant, , born , has been employed with the as
a . On he filed a timely Notice of Traumatic Injury and Claim for
Compensation, claiming that he sustained a left foot injury on . He reported that the
injury occurred at 9:55 AM when he was "crossing the street going into the building". In a
statement accompanying his claim, the claimant wrote that he hurt his foot when he awkwardly
stepped on a curb.

The Postal Service reported that the claimant was not in the performance of duty because he was
crossing the street from the parking lot to clock in. It did not state the claimant's hours of duty.

By letters dated the Office of Workers' Compensation Programs requested that the
claimant and his employer submit evidence in support of the claim.

Received into the record on was a copy of the first page of the Office's letter to
the employer. This document has typed comments whose author is not identified; the source of the
comments is nowhere identified; the comments have no date. According to these comments: when
the claimant was injured he was on premises which were "operated by the agency"; the time of the
injury was 9:15; the claimant's tour begins at 9:50; the injury occurred when the claimant was
coming into the building to begin his tour; College Street [the street the claimant was crossing] is
maintained or operated by the agency.

The Office denied the claim on on the basis that the claimant was not in the
performance of duty.

The claimant's attorney, Paul Felser, requested a hearing on behalf of the claimant. I find that the
case is not in posture for a Hearing. The case requires further development.

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.¹ The phrase sustained

¹ 5 U.S.C. § 8102(a).

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.² 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.³

The Employees Compensation Appeals Board (ECAB) has recognized a general principle, called the premises doctrine, that off premises injuries sustained by employees having fixed hours and places of work while going to or coming from work or during a lunch period are not compensable as they do not arise out of and in the course of employment.⁴ Rather, such injuries are merely the ordinary, non-employment hazards of the journey itself, which are shared by all travelers, subject to certain exceptions.⁵

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,⁶ or which are in the nature of necessary personal comfort or ministration.⁷ The Board has also found that the 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.⁸ 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.⁹ The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.¹⁰

First, the record of the instant case does not contain a statement from an employing agency official addressing the matter of premises. There is only a copy of the Office letter with a few unsigned typed comments.

Second, the Employees Compensation Appeals Board has included within the performance of duty a reasonable time before and after work to allow for coming and going, as well as personal ministrations, such as lunch or bathroom breaks, engaged in for the benefit of the employer. If

² See *M.S.*, ECAB Docket No. 18-0465 (issued August 1, 2018).

³ *A.C.*, ECAB Docket No. 17-1927 (issued April 12, 2018).

⁴ *K.M.*, Docket No. 17-1263 (issued December 19, 2018).

⁵ *Id.*

⁶ See *M.T.*, Docket No. 17-1695 (issued May 15, 2018).

⁷ See *J.L.*, Docket No. 14-368 (issued August 22, 2014).

⁸ *Id.*

⁹ See *B.H.*, Docket No. 14-0829 (issued July 8, 2015).

¹⁰ *Id.*

the injury does not take place during those periods or on employer premises, the Board will place special emphasis on whether the employee was engaged in an activity related to fulfilling the duties of his employment.¹¹

The claimant initially claimed that the injury occurred at 9:55 AM. The employer did not provide information about work hours. Only the anonymous comments indicate that the claimant's work hours begin at 9:50. The comments also indicate that the injury occurred at 9:15. Clarity here is essential. If the injury occurred at 9:15 and work did not begin until 9:50, the Office must determine whether the early arrival was solely personal in nature, or whether there was employer benefit such that any injury would be within the scope of employment.¹²

The Office's Procedure Manual states that if clarification is needed in regard to whether the claimant was on the employer's premises, the Claims Examiner should secure it from the official superior. The Manual states that the superior should provide a statement which describes the boundaries of the premises and shows whether the claimant was within those boundaries when the injury occurred.¹³

The Manual also advises that an employee is in the performance of duty when injured while on parking facilities owned, controlled or managed by the employer. The Manual states that the Official superior should be requested to state whether the parking facilities are owned, controlled, or managed by the employer, and whether the location where the claimant was injured was owned, controlled, or managed by the employer.¹⁴

Work schedules and control of facilities are the type of evidence normally obtained by the employer. The Office has the responsibility to develop this evidence.¹⁵

ON REMAND, the Office must request that the _____ provide information regarding the injury.

- The time of the injury.
- The claimant's regular work schedule
- Any explanation for deviating from that schedule on
- Provide a statement which describes the boundaries of the premises and shows whether the claimant was within those boundaries when the injury occurred.

¹¹ *L.L.*, ECAB Docket No. 10-2384, Issued July 15, 2011.

¹² *Nona J. Noel*, 36 ECAB 329 (1984); *T.F.*, Docket No. 09-154 (issued July 16, 2009); 56 ECAB 639 (2005); 52 ECAB 474 (2001).

¹³ DFEC Procedure Manual, Part 2 – Claims, 2-0804-4 (b).

¹⁴ DFEC Procedure Manual, Part 2 – Claims, 2-0804-4 (f).

¹⁵ *Richard Kendall*, 43 ECAB 790 (1992).

- Provide a statement addressing whether the location where the injury occurred was owned, controlled or managed by the employer.
- Provide a similar statement with regard to the parking lot.
- Provide a statement addressing whether there was any special hazard at the particular off-premises point; address any association of the access route with the premises as far as going and coming is concerned.

When the employer's response is received, and after any other case development that may become necessary, the Office should issue a *de novo* decision.

ISSUED:
WASHINGTON, DC

Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs