

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

C.Y., Appellant	)	
	)	
and	)	<b>Docket No. 21-1009</b>
	)	<b>Issued: May 1, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Albuquerque, NM, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 23, 2021 appellant filed a timely appeal from a June 1, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on April 15, 2021, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the June 1, 2021 decision, OWCP received additional evidence. 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 April 16, 2021 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 15, 2021 he sustained bruising and contusions to his ribs and left elbow when he fell from a dock while in the performance of duty. On the reverse side of the claim form, the employing establishment asserted that he had been injured due to his own willful misconduct, because he unlocked a trailer, did not utilize a dock ramp, and stepped over a gap onto the truck, which it described as a willful safety violation. Appellant stopped work on the date of injury.

In a statement dated April 15, 2021, M.D., appellant's coworker, recounted that he had just finished loading a truck that day with appellant, and was unsure why appellant opened the truck to unload it again. He also related that he did not witness the accident.

In an email to the employing establishment dated April 16, 2021, appellant asserted that on April 15, 2021 he was standing on a dock leveler and opened the door of a truck to get it ready to unload. He related that the truck then sounded its horn and pulled forward, which caused him to fall from the dock. Appellant noted that he landed on his abdomen and ribs and an ambulance was called.

In an undated statement, M.C., an employing establishment supervisor, noted that on April 15, 2021 an expeditor advised her of the claimed employment incident when it occurred. She then spoke to appellant, who advised her that he opened the trailer door to get an early start unloading the truck, and then realized that the truck "had all 871," so he attempted to exit the trailer. Appellant further related that the truck started moving as he stepped out, which caused him to fall, striking the dock plate with his abdominal area.

In an investigative interview form dated April 16, 2021, D.I., an employing establishment employee and the driver of the truck in question, indicated that, while he was strapping down the load, appellant was at the bay door. After the incident, he noticed that the trailer door was opened and the straps were loosened.

OWCP also received a position description of appellant's duties as a mail handler, which included operating a jitney, forklift, or pallet truck for the movement of mail and other mail handler functions as required.

In a development letter dated April 26, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and attached a questionnaire for his completion. In the same letter, OWCP requested that the employing establishment provide detailed evidence of willful misconduct. It afforded both parties 30 days to respond.

OWCP thereafter received emergency room records dated April 15, 2021 by Dr. Anneliese Keller, a Board-certified emergency medicine specialist, who noted that appellant related complaints of severe pain in his left mid-abdomen, ribs, and chest which he attributed to slipping and falling approximately five feet from a loading dock onto a steel beam, landing on his abdomen and left arm. Dr. Keller performed a physical examination and documented tenderness to palpation in the ribs, abdomen and left arm and abrasions of the mid-abdomen, and left elbow.

She recommended that appellant undergo computerized tomography scans of the chest, abdomen, and pelvis, an abdominal ultrasound, and x-rays of the ribs, chest and left elbow. These studies were negative for any acute injury. In an after-visit summary of even date, Dr. Keller diagnosed contusions of multiple sites and an unspecified fall.

In a letter dated April 16, 2021, Dr. Keller released appellant to return to work as of April 19, 2021.

A report of x-rays of the bilateral ribs dated April 19, 2021, revealed posterior nondisplaced lateral left sixth and seventh rib fractures.

In a letter and separate visit summary dated April 19, 2021, Dr. Anna Kristina Vestling, a Board-certified emergency medicine specialist, indicated that appellant was seen in her office on that date and could return to work on April 23, 2021. She noted a diagnosis of multiple rib fractures due to a fall.

In a letter dated April 27, 2021, Dr. Richard J. Roche, a Board-certified internist, noted that appellant was seen in his office on that date and recommended that appellant remain out of work for four weeks due to his injury.

In a May 26, 2021 response to OWCP's development letter, the employing establishment asserted that appellant's willful misconduct consisted of ignoring established procedures and safety rules by opening a vehicle that had been cleared to pull away from the dock and stepping over the open gap between the dock and the trailer to access the mail in the truck. It noted that all established safety rules and regulations are put in place to prevent injuries, and that employees should know that willfully violating these rules and procedures would likely lead to injury.

By decision dated June 1, 2021, OWCP found that appellant had established that the April 15, 2021 incident occurred, as alleged, and that a medical condition had been diagnosed in connection with the accepted employment incident. However, it denied his claim, finding that he was not in the performance of duty at the time of the incident, because the evidence indicated willful misconduct by him for ignoring established procedures and safety rules. Thus, OWCP found that the incident did not arise in the course of employment and within the scope of compensable work factors as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</sup> 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.<sup>6</sup>

The Board has interpreted the phrase “sustained while in the performance of duty” to be the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, arising out of and in the course of employment.<sup>7</sup> The phrase “in the course of employment” relates to the elements of time, place, and work activity.<sup>8</sup> 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 his or her master’s business, at a place when he or she may reasonably be expected to be in connection with his or her employment, and while he or she was reasonably fulfilling the duties of employment, or engaged in doing something incidental thereto.<sup>9</sup>

Section 8102(a)(1) of FECA provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is --

(1) caused by willful misconduct of the employee.”<sup>10</sup>

The Board has defined willful misconduct as deliberate conduct involving premeditation, obstinacy, or intentional wrongdoing with the knowledge that it is likely to result in serious injury or conduct that is in wanton or reckless disregard of probable injurious consequences.<sup>11</sup> The allegation of willful misconduct is an affirmative defense which OWCP must invoke in the original adjudication of the claim,<sup>12</sup> and OWCP has the burden to prove such a defense.

With respect to the affirmative defense of willful misconduct, OWCP’s procedures provide:

“The question of willful misconduct arises where at the time of the injury the employee was violating a safety rule, disobeying other orders of the employer, or

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers’ compensation law. *D.T.*, Docket No. 19-1486 (issued January 17, 2020); *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>8</sup> *R.E.*, Docket No. 18-0515 (issued February 18, 2020); *J.G.*, Docket No. 17-0747 (issued May 14, 2018).

<sup>9</sup> *M.T.*, Docket No. 19-1546 (issued March 5, 2020); *see J.B.*, Docket No. 17-0378 (issued December 22, 2017).

<sup>10</sup> 5 U.S.C. § 8102(a)(1).

<sup>11</sup> *I.A.*, Docket No. 15-1913 (issued July 20, 2016); *W.S.*, Docket No. 15-1271 (issued October 5, 2015).

<sup>12</sup> *See M.D.*, Docket No. 19-0841 (issued December 2, 2020); *S.M.*, Docket No. 18-1574 (issued March 27, 2019); *see also Bruce Wright*, 43 ECAB 284, 295 (1991).

violating a law. Safety rules have been promulgated for the protection of the worker -- not the employer -- and, for this reason, simple negligent disregard of such rules is not enough to deprive a worker or the worker's dependents of any compensation rights. All employees are subject to the orders and directives of their employers in respect to what they may do, how they may do certain things, the place or places where they may work or go, or when they may or shall do certain things. Disobedience of such orders may destroy the right to compensation only if the disobedience is deliberate and intentional as distinguished from careless and heedless."<sup>13</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on April 15, 2021, as alleged.

OWCP accepted, and the evidence supports, that appellant sustained multiple left rib fractures as a result of an April 15, 2021 fall while on the premises of the employing establishment.

The employing establishment controverted the claim alleging an affirmative defense of willful misconduct.<sup>14</sup> It asserted that appellant violated established safety rules and procedures when he attempted to unlock and access a cleared vehicle located on a loading dock. When claiming an affirmative defense in denying a claim, the defense must be invoked in the original adjudication of the claim, and the employing establishment has the burden to prove such a defense.<sup>15</sup> The evidence required to establish this defense must be reliable, probative, and substantial.<sup>16</sup>

The Board finds that the evidence submitted fails to establish that appellant's actions rose to the level of willful misconduct. At the time of the incident, appellant was performing his regular duties as a mail handler. His coworker, M.D., noted that he was unsure as to why appellant had opened the truck to unload it again. However, appellant's supervisor, M.C., indicated that he explained that appellant mistakenly opened the truck to load it and once appellant realized the mistake, he tried to disembark the truck and it pulled away, causing him to fall. Thus, appellant's statement and the various witness statements suggest he mistakenly reopened a truck, which had already been cleared to depart. This simple negligent disregard of a safety rule is not enough to deprive him of compensation rights. As noted above, all employees are subject to the orders and directives of their employers, and disobedience of such orders may destroy the right to compensation only if the disobedience is deliberate and intentional as distinguished from careless and heedless.<sup>17</sup> The evidence does not establish that appellant had an intent to violate a safety rule, disobey other orders of the employer, or violate the law. Under the circumstances of this case, the

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<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.14 (September 1995).

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *See B.P.*, Docket No. 17-0580 (issued March 12, 2018).

<sup>16</sup> *See A.S.*, Docket No. 10-0514 (issued April 12, 2011).

<sup>17</sup> *Supra* note 13.

Board finds that his conduct was not deliberate and intentional with regard to his actions leading to injury on that date. Thus, the affirmative defense of willful misconduct is denied.

The Board further finds that appellant's injury occurred in the performance of duty as it occurred at a time and place where he was reasonably expected to be, and he was reasonably fulfilling the employment duties he had been assigned.<sup>18</sup> The statements of record confirmed that the fall occurred on the employing establishment's premises and that his duties included opening trucks to prepare them to be unloaded. Appellant indicated that he was standing on a dock leveler and opened the door of a truck to get it ready to unload, and the truck pulled away, causing him to fall. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>19</sup> The Board finds that the evidence does not establish that appellant's actions constituted a departure from his assigned duties.

The Board, therefore, finds that the claimed injury occurred in the performance of duty and thus the issue of causal relationship between the accepted employment incident and the diagnosed conditions must be considered by OWCP.<sup>20</sup> Upon return of the case record OWCP shall undertake such further development as deemed necessary to be followed by a *de novo* decision on appellant's entitlement to compensation.

### **CONCLUSION**

The Board finds that appellant has established a traumatic incident in the performance of duty on April 15, 2021, as alleged.

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<sup>18</sup> *Supra* note 12.

<sup>19</sup> *See A.C.*, Docket No. 18-1567 (issued April 9, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>20</sup> *A.G.*, Docket No. 18-1560 (issued July 22, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: May 1, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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