



# FECA Performance of Duty

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# OVERVIEW

- ▶ How Employing Agencies Help w/POD Issues
- ▶ Performance of Duty Defined
- ▶ POD Specifics – Rules & Scenarios
- ▶ Emotional Conditions POD
- ▶ Resources & Guides

# How Can Employing Agencies Help w/POD Issues?

- ▶ Provide complete information on all aspects of the claim INCLUDING PROMPT SUBMISSION OF CLAIM
- ▶ Promptly respond to OWCP inquiries
- ▶ Important to set out the factual basis of the claim ASAP (employee and agency); contemporaneous evidence is generally the best evidence about what happened.

# FECA Statutory Language

▶ 5 U.S.C § 8102(a)

“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.”

# ECAB Definition of POD

- ▶ The Employee's Compensation Appeals Board ("ECAB") has said that an injury, incident or exposure must arise out of and in the course of employment for it to be considered in the performance of duty ("POD").
  - ▶ **In the course of employment** concerns the work setting, the location, and time of injury.
  - ▶ **Arising out of employment** deals not only with the work setting but the causal relationship, that an employment factor caused the injury.



# Statutory Exclusions to POD

## **INTENTIONAL INJURY TO ONSELF OR ANOTHER**

- Statement from Dr. or Hospital describing employee's state of mind
- Statement from EA explaining why they believe claimant intended to injure their self

## **INTOXICATION BY DRUG OR ALCOHOL**

- Evidence must show particular manner in which intoxication caused the injury (proximate cause)

## **WILLFUL MISCONDUCT**

- Deliberate and intentional vs. careless and heedless



# Statutory Exclusions to POD

- ▶ ECAB CONSIDERS THE STATUTORY EXCLUSIONS TO POD AS AFFIRMATIVE DEFENSES TO COVERAGE.
  - SHOULD BE RAISED AT THE INITIAL ADJUDICATION PHASE
  - BURDEN TO ESTABLISH IS ON OWCP.
  - **Bottom line**: If the agency has evidence there was willful misconduct, intoxication, or intentional injury, present that evidence at the earliest opportunity!



# The Premises Doctrine

- ▶ ECAB says 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.”
- ▶ **WHY**: Such injuries are merely the ordinary, non-employment hazards of the journey itself, which are shared by all travelers, subject to certain exceptions.”





# The Premises Doctrine

## SO WHAT IF I'M INJURED ON THE PREMISES?

- ▶ Injuries sustained on premises by employees having fixed hours and places of work are in the POD if, when the injury occurred, the employee”
  - ▶ Was performing assigned duties, OR
  - ▶ Was engaged in activity reasonably incidental to employment:
    - ▶ PERSONAL COMFORT DOCTRINE - personal acts for the employee's comfort, convenience and relaxation (e.g. eating meals and snacks, going to the bathroom, or drinking a beverage)
    - ▶ NOTE: must be during work hours or within a reasonable time before or after the end of the normal work shift



# Premises: Parking Lots

- ▶ ECAB says the following factors determine whether a parking lot is part of the employer's premises:
  - **Did the employer contract for the exclusive use by its employees of the parking area?**
  - Were parking spaces on the lot assigned by the employer to its employees?
  - Were the parking areas checked to see that no unauthorized cars were parked in the lot?
  - Was the parking was provided without cost to the employees?
  - Was the public was allowed to use the lot?
  - Was parking was available to employees?



# Premises: Proximity Rule



- ▶ **RULE:** Premises will extend to hazardous conditions which are proximate to the premises and may, therefore, be considered as hazards of employment
- ▶ **WHY?** The most common reason is that the off-premises point at which the injury occurred lies on the only route, or at least on the normal route, employees must take to reach the premises

# Premises: Going & Coming

- ▶ An employee is generally not considered to be in the performance of duty while going to and from work.
  - Rationale → the worker is experiencing hazards common to all travelers
  - Exception → special mission, employer pays for the trip/employer provides conveyance, dual purpose trip
  - Note → receiving metro subsidy not POD



# PREMISES EXAMPLES

- ▶ **LUNCH BREAK:** Employee injured her right arm when she slipped on a walking trail located away from her place of employment during her lunch break.

POD???

No

# PREMISES EXAMPLES

- ▶ **PARKING LOT:** Employee, a health technician, hit her head at 4:20 p.m. when trying to stop herself from falling after slipping on ice in parking lot when stepping out of her truck. Her regular duty hours were 8:00 a.m. to 4:30 p.m. Employer said that employee was starting her vehicle to get it warm before leaving work. Employee said that she was required to park in lot and that agency rented the lot.

POD???

Maybe, Need More Evidence

# PREMISES EXAMPLES

- ▶ **GOING & COMING:** Employee, a legal aid specialist, was injured at 7:20 a.m. when the public bus he was taking to work made a sudden stop that propelled him towards the windshield. Employee had a fixed workplace and fixed work hours from 8:00 a.m. to 4:30 p.m.

POD???

No

# PREMISES EXAMPLES

- ▶ **GOING & COMING:** Employee, a corrections officer, was injured at 7:02 a.m. in a motor vehicle accident. She was driving to firearms training when a large tree branch fell through the windshield and roof of her vehicle. While pulled over, the back of her vehicle was rear-ended by a speeding car. Employer said she was assigned to perform firearms training that day, and was authorized to utilize her personal vehicle to drive to training range. Employee's work hours were 6:00 a.m. to 2:00 p.m.

POD???

Yes



# PREMISES EXAMPLES

- ▶ **PROXIMITY EXCEPTION:** Employee was struck by a car at 6:30 a.m. in the crosswalk of two public streets while walking from a parking garage to work. The parking lot was part of the employer's premises. The crosswalk between the parking area and workplace was the normal route that the employees used to get to work.

POD???

Yes

# PREMISES EXAMPLES

- ▶ **REASONABLY INCIDENTAL TO EMPLOYMENT:**  
Employee claimed that she was injured while sitting at her desk working on the computer and listening to music. Employer claimed that employee was asleep at her desk at the time of the alleged injury and charged .3 hours AWOL for sleeping while on duty. Employer advised employee in a 2014 letter that sleeping at work was not permitted.

POD???

No

# Telework

## Employees working from home:

- ▶ Are covered if performing regular duties of employment at time of injury, or some activity directly related to their employment
- ▶ Personal comfort doctrine does NOT apply
- ▶ Critical question: what was the employee doing at the time of the injury?

# TELEWORK EXAMPLES

- ▶ Jeanette is teleworking busily when she decides to throw a load of laundry in her washer because she has no clean clothes for the week.
- ▶ She trips over her flip flops on the way down the stairs and breaks her ankle. Covered?
- ▶ Multi-tasker that she is, what if she had a headset and was talking to her supervisor at the time?
- ▶ What if the injury occurred moving her desk for a meeting with her supervisor to have a better background for the call? What if it occurred after the call returning the desk to its original location?

# Travel/TDY

- ▶ Covered on travel for activities reasonably incidental to the travel
- ▶ Covered while eating, sleeping and brushing your teeth, taking a walk
- ▶ Not covered during a substantial deviation for personal activities such as sightseeing or skydiving.
- ▶ **IMPORTANT:** It is an overstatement to say there is 24/7 blanket FECA coverage for all activities during travel.

# TRAVEL/TDY EXAMPLES

- ▶ Tom's agency sends him to make a presentation at CHEP in Orlando and he decides to come to Orlando to visit a friend the weekend before the conference.
- ▶ Flight attendant spills coffee on Tom in flight. POD?



# Recreational/Social Activities

- ▶ Covered if on premises during lunch or recreational period as a regular incident of employment OR
- ▶ The employer, by expressly or impliedly requiring participation, brings the activity into the orbit of employment OR
- ▶ The employer derives a substantial benefit beyond the intangible benefit of improvement in employee health/morale

# RECREATION EXAMPLES

- ▶ **Recreation (and Personal Comfort Doctrine):**  
Employee, an intelligence specialist, injured her left knee when, after exercising at employer gym, she slipped on standing water in the shower in the locker room. Employer said employee's injury occurred 45 minutes after the start of her work shift, and that she was participating in an informal personal fitness activity that did not coincide with her lunch or break period. Employer encouraged employees to participate in physical fitness. Employee's supervisor had a verbal agreement with employee giving employee flexibility during her work day to exercise.

POD???

Yes



# RECREATION EXAMPLES

- ▶ An employee is injured while attempting to hula hoop while roller-skating at the office holiday party. The party was voluntary, but during work hours.

- ▶ Was this an employer sponsored event?
- ▶ If yes, why?
- ▶ If no, why?
- ▶ If not sure, what information do you need?

# Employing Agency Physical Fitness Programs

## Structured Physical Fitness Programs (PFP) FECA Procedure Manual 2-0804-18

- ▶ If the employee's position requires that a certain level of fitness be maintained, they may have a structured program where work time may be allocated for exercise and off duty exercise may also be performed.
  - Typically include agency-appointed fitness coordinators, physical assessment tests and structured exercise while off duty.
  - Employees enrolled in a PFP are in the performance of duty for FECA purposes while doing authorized PFP exercise.

# Fitness Centers on Agency Premises

- ▶ Employees who are injured while exercising or participating in a recreational activity during authorized lunch or break periods in a designated area of the employing establishment premises have the coverage of the Act whether or not the exercise or recreation was part of a structured PFP.
- ▶ Injuries which occur during the use of fitness and recreational facilities furnished by the employing establishment outside of official work hours, on or off the premises, are not compensable if the employee was not participating in a structured PFP.
- ▶ The mere fact that the employing establishment allows employees to use its facilities on their own time does not create a sufficient connection to the employment to bring any resulting injury within the coverage of the Act.

See FECA Procedure Manual 2-0804-18.

# FITNESS EXAMPLES

- ▶ An employee injures their knee while working out on their lunch break at the gym across the street from her job. Is this POD? What factors do we consider? What questions do we ask?
  - ▶ What if what if the injury occurs on their lunch break at the gym inside of the work building?
  - ▶ What if injury occurs after their work shift ends at the gym inside their work building?
  - ▶ What if the injury occurs in the evening after the first day of CHEP training in the hotel gym?

# Emotional Conditions

- ▶ An emotional injury or condition may be traumatic or occupational in nature.
- ▶ An emotional injury may accompany a physical injury or may occur without physical manifestations.
- \*NOTE: the mere fact that you have an emotional condition during a period of federal employment does not entitle you to FECA.
  - What is needed? **POD**

# Emotional Conditions

## COVERED FACTORS OF EMPLOYMENT

- ▶ Regular or specially assigned work duties
- ▶ Duties need not be excessive but overwork must be established if alleged
- ▶ Altercations/difficult relationships with supervisors if documented
- ▶ Requirements of the employment
- ▶ Erroneous or abusive administrative or personnel actions
- ▶ Dispute with origin in the workplace

# EMOTIONAL CONDITIONS

## WHAT IS NOT COVERED?

- ▶ Failure to receive a promotion (unless error or abuse)
- ▶ Emotional reaction to evaluation or appraisal (unless error or abuse)
- ▶ General allegations of stress
- ▶ Investigations into illegal activity
- ▶ Unsubstantiated claims of harassment
- ▶ Mere fact grievance is lessened or settled is not error or abuse
- ▶ Desire to work in a particular job or environment



# POD References/Guidance

ECAB Decisions

<https://www.dol.gov/agencies/ecab/decisions>

FECA Procedure Manual, Chapter 2-0804 (POD)

<https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECA-PT2/group1#20804>

