United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 10-1011**
	)	**Issued: December 8, 2010**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Atlanta, GA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 2, 2010 appellant filed a timely appeal from the September 21, 2009 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury on October 22, 2008 while in the performance of duty.

FACTUAL HISTORY

On October 30, 2008 appellant, then a 55-year-old maintenance mechanic, filed a traumatic injury claim. He alleged that at 6:15 p.m. on October 22, 2008, after duty hours, he injured his left arm while performing a bench press as he exercised in the weight room of the employing establishment's National Center for Employee Development in Norman, Oklahoma. Appellant was on travel status, attending a training course. He went to the emergency room on October 29, 2008 and received a diagnosis of left arm strain and left trapezial spasm. In the

claim form, an employing establishment administrative services specialist noted that appellant was on temporary duty status attending training but the injury occurred during a personal recreational activity after duty hours.

On August 7, 2009 the Office noted that appellant's injury resulted from a recreational activity after duty hours. It asked him to submit evidence that he was injured while performing a duty of his employment and a detailed medical report explaining how the diagnosed condition was causally related to his employment.

The employing establishment advised that appellant performed official duty (training) between 7:00 a.m. and 3:30 p.m. during the days he was on temporary travel duty. Appellant's activity lifting weights in the weight room at the training center housing facility was not a required part of his training and the employer derived no benefit from the activity. He was engaging in a personal recreational activity after hours.

By decision dated September 21, 2009, the Office denied appellant's claim on the grounds that he was not in the performance of duty when the injury occurred.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition is causally related to factors of his employment. Where an employee is on temporary-duty assignment away from his federal employment, he is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.[1]

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

> "Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."[2]

However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is

[1] *See Cherie L. Hutchings*, 39 ECAB 639 (1988).

[2] 1 A. Larson, *The Law of Workers' Compensation*, § 25.01 (2000); *see also Lawrence J. Kolodzi*, 44 ECAB 818 (1993).

causally related to the incidents of employment.[3] The medical evidence must establish a causal relationship between the condition and factors of employment.[4]

In regard to recreational activities, Larson's states:

"Recreational or social activities are within the course of employment when:

> (1) They occur on the premises during a lunch or recreational period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."[5]

These are three independent links, by which recreational or social activities can be tied to employment and, if one is found, the absence of the others is not fatal.[6] Accordingly, when an employee is injured during a recreational or social activity, he or she must meet one of the above-noted criteria in order to establish that the injury arose in the performance of duty.

ANALYSIS

Appellant was on temporary duty travel status at the time of the claimed injury, attending training in another city. He injured his left arm while working out in the weight room of the employing establishment training center housing facility. The injury occurred at 6:15 p.m., after official training duty hours which were 7:00 a.m. to 3:30 p.m. Lifting weights was not a required part of appellant's training as a mechanic. His employer derived no benefit from the activity.

The claimed injury is not covered under the first criterion for recreational and social activities. Although the injury occurred on the premises of the temporary-duty housing facility, it did not occur during his 7:00 a.m. to 3:30 p.m. tour of duty.

The second criterion is whether the employing establishment required appellant to participate in weight lifting as part of his temporary-duty training. The employing establishment advised that weight lifting was a voluntary recreational activity and that no employee was required to participate in weight lifting while attending the training course. When the degree of employer involvement descends from compulsion to mere sponsorship or encouragement, the

[3] *See William B. Merrill*, 24 ECAB 215 (1973).

[4] *Id.*

[5] A. Larson, *The Law of Workers' Compensation* § 22.01 (2000); *see Steven F. Jacobs*, 55 ECAB 252 (2004). *See also* FECA (Federal) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.8 (August 1992).

[6] *Steven F. Jacobs, supra* note 5; *Archie L. Ransey*, 40 ECAB 1251 (1989).

questions become closer and it is necessary to conduct a further inquiry.[7] This inquiry focuses on the issue of whether the employing establishment sponsored the activity, whether participation was voluntary and whether the employing establishment financed the activity. The record establishes that the employer did not either expressly or implicitly require participation in weight lifting by employees attending the training course. Although the weight room was a part of the temporary-duty housing facility, the record supports that weight training was not an activity in which appellant, as a training course attendee, was compelled to participate. Participation in weight lifting after work hours was neither part of appellant's training nor was it an activity for which he would be evaluated. It was a voluntary activity. The Board has held that, if a recreational activity is voluntary and there is no direct, substantial benefit to the employer, this outweighs the employer's sponsorship of the recreational facility or event when determining whether an activity occurred in the course of employment.[8] Under the circumstances of this case, appellant has failed to demonstrate that the employing establishment required him to participate in weight lifting during the temporary-duty training course or otherwise made the activity part of his services as an employee.

Appellant has also failed to establish the third criterion, that the employer derived substantial direct benefit from his weight lifting beyond the intangible value of improvement in employee health or morale. No evidence of record suggests that weight lifting was in any way related to the employing establishment's business.[9] Consequently, the evidence of record does not establish that the employing establishment derived substantial direct benefit from the activity beyond the intangible value of improvement in health and morale that is common to all kinds of recreation and social life.[10]

On appeal, appellant contends that his injury is compensable because it occurred during a period of time when he was attending a training course; the employing establishment was responsible for his medical treatment during his stay at the training housing facility; and the training course was a part of his duties as a federal employee. As noted, the circumstances of his case do not meet the criteria for coverage of an injury while on temporary duty or during a recreational activity. The Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that his left arm injury was sustained while in the performance of duty.

[7] Larson, *supra* note 5 at § 22.04(3); *see also Anna M. Adams,* 51 ECAB 149 (1999).

[8] *See Barbara Roy*, 42 ECAB 960 (1991).

[9] *Steven F. Jacobs*, *supra* note 5; *Anna M. Adams*, *supra* note 7 at 154.

[10] Larson, *supra* note 5 at § 22.05(3).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 21, 2009 is affirmed.

Issued: December 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board