United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 13-225**
	)	**Issued: April 4, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2012 appellant, through counsel, filed a timely appeal from an October 16, 2012 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.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on March 29, 2011.

FACTUAL HISTORY

On April 13, 2011 appellant, then a 59-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury on March 29, 2011 while in

[1] 5 U.S.C. § 8101 *et seq.*

the performance of duty. On the claim form he indicated that he was involved in a self-defense training exercise and the time of the injury was 10:00 a.m. on March 29, 2011.

In a report dated April 2, 2011, Dr. Robert Zelenak, an osteopath, indicated that appellant had been "in the academy doing drills" and complained of left shoulder pain.[2] He provided results and examination and diagnosed left shoulder pain, rule out sprain/strain. An x-ray of the left shoulder dated April 2, 2011 was reported as negative.

The record contains a Form CA-16 (authorization for examination and/or medical treatment) dated April 5, 2011 for Dr. George Salloum, a Board-certified orthopedic surgeon. In a report dated April 12, 2011, he provided a history that on "March 28 [to] 29th [appellant] was doing 'take down drills' at police academy." Dr. Salloum stated that appellant complained of left shoulder and neck pain. He stated that appellant was "involved in a takedown maneuver and injured his right hand, left shoulder and neck." Dr. Salloum diagnosed bursitis and tendinitis of the shoulder, carpal tunnel syndrome and neck strain/sprain.

In a form report (CA-20) dated April 19, 2011, Dr. Salloum diagnosed bursitis, tendinitis, carpal tunnel syndrome and neck sprain. He checked a box "yes" that the conditions found were caused or aggravated by the employment activity.

By letter dated July 5, 2011, OWCP requested that appellant provide a detailed description of the alleged employment incident. It also indicated that additional medical evidence was required to establish the claim.

The record contains a July 1, 2011 memorandum from an employing establishment supervisor, stating that appellant did not report the injury to the training staff at the time and tried to continue training throughout the remainder of the week.

In a report dated June 21, 2011, Dr. Salloum stated that appellant continued to have persistent pain in the shoulder and upper extremity. He reported that a magnetic resonance imaging (MRI) scan showed cervical stenosis. On August 10, 2011 OWCP received a copy of a page from the July 5, 2011 letter requesting additional medical evidence, with handwritten comments. The history of injury was reported as take down drills on March 28 and 29, 2011, and a statement that the condition was aggravated by trauma. No signature or initials were provided.

By decision dated August 17, 2011, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On October 12, 2011 appellant submitted a September 21, 2011 report from Dr. Salloum, which stated that appellant initially was seen for neck pain and stiffness after a takedown maneuver. Dr. Salloum also stated that appellant complained of left upper extremity and shoulder pain, with a burning sensation, and these were symptoms consistent with cervical stenosis. On December 12, 2011 appellant submitted a September 5, 2011 statement. He

[2] The report was an emergency room report from the employing establishment medical facility.

reported that during the "last week" of March 2011 he injured his left shoulder while in self-defense training.

Appellant requested reconsideration of his claim by letter July 11, 2012. He submitted a report dated July 5, 2012 from Dr. Arthur Black, a Board-certified orthopedic surgeon, who provided a history that appellant was fine up until an incident "in April 2011where he was going through drills and had his shoulder repeatedly twisted, ranched and strained…." Dr. Black provided results on examination and diagnosed left shoulder bursitis.

By decision dated October 16, 2012, OWCP reviewed the case on its merits. It found appellant had not established an employment incident occurred as alleged or submitted medical evidence establishing an injury causally related to an employment incident.

LEGAL PRECEDENT

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."[3] The phrase "sustained 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."[4] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[5] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by rationalized medical evidence.[6]

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

[3] 5 U.S.C. § 8102(a).

[4] *Valerie C. Boward*, 50 ECAB 126 (1998).

[5] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

Appellant filed a traumatic injury claim for an injury on March 29, 2011, when he stated that he was attending self-defense training. As noted above, the initial question is whether the employment incident occurred as alleged. While there is no evidence disputing that appellant was attending training on March 29, 2011, there is no detailed factual statement as to the claimed incident or incidents in this case. If he is claiming that on March 29, 2011 there was a specific incident that he believes caused an injury, there should be a clear description of the incident. If appellant is claiming that a series of incidents occurred on March 29, 2011 as well as other days of training, then he must provide a clear description of the alleged incidents. He was asked to provide a detailed factual statement but he did not submit a statement explaining the factual basis for his claim. A claimant must submit a sufficient factual statement regarding his or her claim for compensation to establish a *prima facie* case.[8]

The Board also notes that a medical report must be based on an accurate factual background to be of probative value, and the accurateness of the factual history in the medical reports cannot be determined in this case. Dr. Salloum referred briefly to "take down drills" in his initial April 12, 2011 report, and referred to both March 28 and 29, 2011. He did not provide additional detail. In addition, Dr. Salloum provided a number of diagnoses, including bursitis, tendinitis and cervical stenosis, as well as a neck strain/sprain. To establish the claim, there must be rationalized medical opinion, based on an accurate factual and medical background, on causal relationship between a diagnosed condition and federal employment. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[9]

The July 5, 2012 report from Dr. Black provides a history of repeated shoulder movements while going through drills in April 2011. He does not provide additional detail and again, it is not clear whether this is an accurate and complete factual background as the record does not establish any factual allegations regarding specific activities. In addition, Dr. Black did not provide a rationalized medical opinion on causal relationship between a shoulder bursitis and federal employment.

The Board accordingly finds that appellant has not submitted the factual and medical evidence sufficient to establish his claim. 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 established an injury in the performance of duty on March 29, 2011.

[8] *See, e.g., A.E.*, Docket No. 10-860 (issued December 21, 2010).

[9] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 16, 2012 is affirmed.

Issued: April 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board