

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUSTIN E. MARLETT and DEPARTMENT OF THE ARMY,
WHEATON COLLEGE MILITARY SCIENCE DEPARTMENT,
RESERVE OFFICERS TRAINING CORP, Wheaton, IL

*Docket No. 03-466; Submitted on the Record;
Issued June 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a left hand injury on April 6, 2002 in the line of duty.

On April 11, 2002 appellant, then a 22-year-old Reserve Officers' Training Corps (ROTC) cadet, filed a notice of traumatic injury alleging that he injured his left hand on April 6, 2002 when he fell over a tree during an army training exercise in Marseilles, Illinois.

In a May 14, 2002 letter, the Office of Workers' Compensation Programs requested that the professor of military science, Department of the Army, ROTC Command at Fort Knox, provide a statement addressing whether appellant's injury was sustained in the "line of duty." The Office noted in the letter that it was ultimately appellant's responsibility to provide a "line-of-duty" statement.

In a letter dated May 14, 2002, the Office advised appellant of the medical evidence required to establish his claim for compensation. The Office specifically informed appellant of his responsibility to provide a reasoned medical opinion stating how the reported work incident caused or aggravated his claimed injury.

In a letter dated June 10, 2002, which was received by the Office on June 12, 2002, Major Larry E. Brown, assistant professor of military science for Wheaton College Army ROTC, provided a line-of-duty statement for appellant. Major Brown stated that he was "in attendance [at] a weekend Field Training Exercise when [appellant] ... injured his left hand at Marseilles, Illinois National Guard Training installation on April 6, 2002 in the line of duty." Major Brown related that, during the training exercise, appellant fell into some heavy brush as he was making a charge on an enemy position and incurred his left hand injury when he tried to break his fall. He noted that the incident was witnessed by Captain Michael D. Kohler and that appellant immediately sought medical attention after the injury and was excused from the exercise for the remainder of the day.

In a decision dated June 20, 2002, the Office denied appellant's claim for compensation on the grounds that he failed to meet the guidelines for establishing that he was injured in the line of duty while in the ROTC, as required by section 8140 of the Federal Employees' Compensation Act. The Office specifically noted that appellant failed to submit a line-of-duty statement as required by the Federal (FECA) Procedure Manual.

The Board finds that appellant was in the line of duty when he sustained a left hand injury on April 6, 2002.

Section 8140 of the Act¹ has extended federal workers' compensation benefits coverage to members of the ROTC. Section 8140 provides as follows:

“(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy or Air Force who suffers an injury, disability or death incurred or an illness contracted in line of duty --

(1) while engaged in a flight or flight instruction under [C]hapter 103 of [T]itle 10; or

(2) during the period of the member's attendance at training or a practice cruise under [C]hapter 103 of [T]itle 10, United States Code, beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.”

According to the Office procedure manual Chapter 4.600, section 6(b)(3) “[t]he Secretary of the military department (or his or her designee) determines whether or not an injury was incurred in the line of duty, subject to review by [the Office].”² The Office [p]rocedure [m]anual states at [s]ection 5.b(5):

“*The Military Department* concerned is responsible for making a ‘line of duty’ determination, subject to review by [the Office], and should provide the appropriate statutory citation in support of that determination. ‘Line of duty’ determinations made by the military should be accorded great weight. It should be noted that the term, ‘line of duty,’ should be interpreted in the military context, and is not synonymous with the term ‘performance of duty’ as usually interpreted under the [Act]. There are many circumstances in which a member of the military would be considered to be in the ‘line of duty,’ while a civilian federal employee would not be considered in the ‘performance of duty.’ One example of this difference would be in the instance of an ROTC cadet who was authorized to take leave from a training exercise for purposes of personal travel, and was injured when returning to the military base. The military would interpret this injury as

¹ 5 U.S.C. § 8140.

² Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers' Training Corps*, Chapter 4.600.6(b)(3) (May 1996).

having occurred in the 'line of duty,' since the travel was authorized, and took place while traveling to training. A civilian employee under similar circumstances would not be considered to be in the 'performance of duty.'"

The Office denied compensation finding that appellant failed to submit the proper "line-of-duty" statement. The Office, however, received a line-of-duty statement from Major Brown dated June 10, 2002. Major Brown is an assistant professor of military science and the line-of-duty letter was prepared in response to the Office's request. The Board notes that Major Brown specifically discussed the events leading up to appellant's injury, indicating that he was on a weekend ROTC training exercise when he tripped over a tree in a combat maneuver. Major Brown stated that appellant's injury was incurred in the "line of duty." As previously discussed, "line-of-duty" determinations made by the military should be accorded great weight, particularly in this instance where there is no contrary evidence and it was witnessed that the injury of April 6, 2002 was sustained as alleged. Based on Major Brown's conclusion that appellant was injured in the line of duty, the Board will accept this determination. Appellant has established that he sustained an injury while in the line of duty on April 6, 2002, the Office must further review the claim to determine the nature and extent of the injury based on a review of the medical evidence. After such further development of the medical evidence as necessary, the Office shall issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 20, 2002 is set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
June 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member