

Office requested additional factual and medical information by letter dated June 18, 2003. Appellant responded and stated that his injury occurred during a 24-hour shift at the employing establishment. He noted that his job duties required him to be physically fit and that the employing establishment provided exercise equipment at the firehouse.

Appellant's attending physician, Dr. Ikuo Maeda, a Board-certified orthopedic surgeon, completed a report on May 14, 2003 stating, "[47]-year-old male had some pain, the anterior portion of right shoulder, for a couple of months. About a month ago, he was playing basketball and trying to shoot a ball and felt a sharp pain in the anterior portion of right shoulder. Ever since having some pain..." Dr. Maeda diagnosed a tear of the long head of the right biceps. Appellant submitted a magnetic resonance imaging (MRI) scan which demonstrated a rupture of the long head of the biceps on the right.

By decision dated July 22, 2003, the Office denied appellant's claim on the grounds that he failed to provide a consistent history of injury as his statement on the claim form was divergent from the history provided by his attending physician. Appellant initially requested an oral hearing on July 28, 2003. He later requested reconsideration and submitted additional medical evidence from Dr. Maeda.

By decision dated December 24, 2003, the Office reviewed appellant's claim on the merits and found that there was no consistent history of injury and that he failed to meet his burden of proof to establish an injury occurring in the performance of duty on May 10, 2003.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that, the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.³ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ An

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁵ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷

ANALYSIS

On his claim form, appellant described his injury as follows: "Doing a variety of chest (pectoral) exercises while on physical fitness" on May 10, 2003. On May 14, 2003 appellant's attending physician, Dr. Maeda, a Board-certified orthopedic surgeon, noted that appellant had experienced pain in the anterior portion of his right shoulder for "a couple of months." The physician stated: "About a month ago, [appellant] was playing basketball and trying to shoot a ball and felt sharp pain in the anterior portion of the right shoulder." Dr. Maeda indicated that appellant continued to experience pain and diagnosed a tear of the long head of the right biceps.

In response to the Office request for additional factual information regarding his claim, appellant stated that he could exercise at the gym or firehouse after 3:30 p.m., while serving a 24-hour shift. He stated: "Exercise room in the firehouse usually have free weights, jogging machines and stationary bikes. We also can play volleyball, basketball or walk. The injury I received occurred during my 24-hour duty and was at the firehouse."

In support of his reconsideration request, appellant submitted additional medical evidence from Dr. Maeda dated September 3 and 19, 2003 addressing the history of injury. On September 3, 2003 Dr. Maeda stated that it was rare to tear a biceps tendon while playing basketball. In a September 19, 2003 narrative report, he stated:

"[Appellant] had a rupture of long head of biceps of right shoulder in May 2003 while playing basketball. It was stated that it is rare to rupture biceps by just playing basketball unless severe impact. However, it was noted that [appellant] has had chronic bicipital tendinitis due to bench presses that he does for the physical fitness and that was seen by Dr. Bradley Lee on March 4, 2003 and diagnosis of the bicipital tendinitis was made due to repetitive weightlifting, particularly after bench presses or curls using biceps.... I do feel that [appellant] has chronic tendinitis of long head of biceps prior to this rupture as a result of

⁵ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.* at 255-56.

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

weightlifting, curls, etc., for conditioning for work. There is minor strain to right shoulder while playing basketball, could lead to the rupture of the biceps tendon.”

In the record before the Board there are three different descriptions of how appellant’s alleged employment injury occurred. He initially attributed his condition to lifting weights while in the performance of duty on May 10, 2003. Dr. Maeda initially attributed appellant’s condition to playing basketball and lifting weights more than a month prior to May 10, 2003 in a May 14, 2003 report. In a September 19, 2003 report, he stated that appellant’s basketball injury occurred in May 2003, rather than a month prior as noted on May 14, 2003. Dr. Maeda indicated that appellant’s biceps tendinitis developed as a result of lifting weights over an extended period of time and that this tendinitis contributed to his biceps tear while playing basketball in May 2003. Appellant has not provided a consistent history of injury on his claim form and to his attending physician. While his statement of sustaining injury on May 10, 2003 is consistent with stopping work on May 12, 2003 and with seeking treatment on May 14, 2003 his claim of a traumatic injury due to lifting weights is not consistent with the histories as recorded by Dr. Maeda, who indicated that appellant’s traumatic injury occurred while playing basketball. Due to the inconsistencies of the factual evidence of record, appellant has failed to meet his burden of proof in establishing that he sustained an injury as alleged on May 10, 2003. The Board finds that the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to provide a consistent history of injury occurring on May 10, 2003 and resulting in the diagnosed condition of biceps tear on the right. Appellant has failed to meet his burden of proof in establishing an injury in the performance of duty and the Office properly denied his claim.

ORDER

IT IS HEREBY ORDERED THAT the December 24 and July 22, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member