

United States Department of Labor
Employees' Compensation Appeals Board

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JOHN C. QUIRARTE, Appellant)	
)	
and)	Docket No. 06-619
)	Issued: May 11, 2006
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Modesto, CA,)	
Employer)	
_____)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>John C. Quirarte, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 18, 2006 appellant filed a timely appeal of a December 2, 2005 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On September 20, 2005 appellant, then a 32-year-old special agent, filed a traumatic injury claim alleging that on August 25, 2005 he hurt his left shoulder after engaging in physical training activity at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. He submitted an October 20, 2005 medical report of Dr. Laurel R. Lemasters, a Board-certified

radiologist, regarding a magnetic resonance imaging (MRI) scan of the left shoulder. Dr. Lemasters reported normal results and stated that he did not see any joint derangement.

By letter dated October 31, 2005, the Office notified appellant that additional evidence was necessary to adjudicate his claim. The Office advised him about the factual and medical evidence he needed to submit to establish his claim.

In a November 22, 2005 letter, appellant explained the delay in reporting his alleged injury, stating that he believed the soreness would go away. He provided a description of how his left shoulder injury occurred and stated that no one witnessed the alleged injury. Appellant added that he did not sustain any other injury either on or off duty between the date of injury and the date he first reported the injury to his supervisor and physician. He indicated that he did not have any similar disabilities or symptoms and that he had never filed a workers' compensation claim prior to the alleged injury.

Appellant submitted an authorization for examination and/or treatment form dated October 14, 2005 of Dr. Sullivan, an orthopedic surgeon. He listed a history that appellant hurt his left shoulder during required physical training at FLETC on August 25, 2005. Dr. Sullivan diagnosed left shoulder biceps tendinitis and indicated with an affirmative mark that the diagnosed condition was caused by the August 25, 2005 incident. He ordered an MRI scan of the left shoulder to rule out "SLAPP" and subluxation.

By decision dated December 2, 2005, the Office found the medical evidence of record insufficient to establish that appellant sustained a left shoulder injury causally related to the August 25, 2005 incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS

The Office accepted that on August 25, 2005 appellant engaged in physical training activity while in the performance of duty. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted incident caused a left shoulder injury.

In an October 14, 2005 medical report, Dr. Sullivan diagnosed left shoulder biceps tendinitis. He indicated with an affirmative mark that the diagnosed condition was caused by the August 25, 2005 employment incident. Dr. Sullivan did not provide any medical rationale explaining how or why appellant's diagnosed condition was caused or aggravated by the accepted employment incident. Dr. Sullivan's report is insufficient to establish appellant's claim. A report which only addresses causal relationship with a check mark without more by way of medical rationale explaining how the incident caused the injury, is of diminished probative value and insufficient to establish causal relationship.⁹

Dr. Lemasters' MRI scan of appellant's left shoulder was normal and he stated that there was no evidence of any joint derangement.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left shoulder injury in the performance of duty on August 25, 2005. Therefore he failed to meet his burden of proof.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Charles E. Evans*, 48 ECAB 692 (1997).

⁹ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

CONCLUSION

The Board finds that appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the August 25, 2005 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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