

**United States Department of Labor  
Employees' Compensation Appeals Board**

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R.K., Appellant )  
and ) Docket No. 08-615  
DEPARTMENT OF THE ARMY, ILLINOIS ) Issued: August 5, 2008  
NATIONAL GUARD, YOUTH CHALLENGE )  
PROGRAM, Springfield, IL, Employer )  
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)

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 26, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated November 19, 2007 that denied his claim for a traumatic injury alleged to have occurred on September 28, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish his eligibility for benefits under the Federal Employees' Compensation Act.

## **FACTUAL HISTORY**

On October 4, 2007 appellant, then 16 years old, filed a traumatic injury claim alleging that he was injured in an altercation in a parking lot of a gym on September 29, 2007.<sup>1</sup> While not containing any further detail of the alleged injury, the form also reflected that appellant's employer was the Illinois National Guard, Lincoln's Challenge Academy and also listed the "Department of the Army, TAG-IL" as the employing establishment.<sup>2</sup> The claim form stated that appellant was a cadet, Grade 2, Step 1, at the time the form was filed.

The case record contains several notes and a bill from Carle Foundation Physician Services. The unsigned Carle Foundation Hospital report of an emergency department visit on September 29, 2007 notes an "[o]pen wound of face, unspecified site, without mention of complication." The record also contains a Carle Clinic medical note, electronically signed by Ginny Brown, N.P.C. on October 5, 2007 but dated October 4, 2007. The note indicates the removal of sutures from appellant's left upper lip, that the laceration was healing well and that appellant was released without restrictions. By way of history, the note recites that appellant was injured on September 28, 2007 when he was hit in the face by a classmate. Appellant had visited the emergency room where three sutures were placed in his lip.

By letter dated October 17, 2007, the Office requested additional information which asked for additional medical information and also asked "Was your injury caused by your own misconduct or your intent to injure yourself or other(s)?" The note of October 4, 2007 was received by the Office October 23, 2007 and the emergency visit note was received November 23, 2007.<sup>3</sup> By decision dated November 19, 2007, the Office accepted that the claimed events occurred, but denied the claim because the medical evidence failed to provide a diagnosis which could be connected with the event.

## **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 Federal Employees' Compensation Act, that the claim was timely filed within the applicable time limitation period of

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<sup>1</sup> Compare *J.M.*, Docket 07-2382 (issued June 9, 2008) (the facts are similar, in that, appellant alleged assault while enrolled as a cadet in the Youth Challenge Program). The Office affirmed on insufficient medical evidence with no discussion of employment status or fact of injury.

<sup>2</sup> The National Guard Youth Challenge Program provides services for at-risk youth age 16 to 18 in a disciplined residential setting to help them improve their academic performance and gain positive values. There is no expectation that cadets will join the military although while in the program there is a component of community service. The program is now funded by State and Department of Defense sources. It was established by section 1091 of the National Defense Authorization Act for 1993. The Office regards cadets as civil employees for purposes of the Federal Employees' Compensation Act similar in status to Job Corps enrollees.

<sup>3</sup> The unsigned emergency room report was not received by the Office until after the denial of the claim and is therefore not evidence before the Board. The Board may consider only evidence of record on the date of the decision appealed and may not consider "new evidence" submitted after the Office decision. *Ricky Greenwood*, 57 ECAB 462 (2006); *Sandra D. Pruitt*, 57 ECAB 441 (2005).

the Federal Employees' Compensation 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 are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup> These essential elements must be established by the weight of the evidence.<sup>5</sup>

Appellant alleges a traumatic injury arising out of a fight or assault. To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> Larson, in addressing assaults, notes that, when it is clear that the origin of the assault is purely private and personal and the employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault should be held noncompensable. An assault, to be compensable, must either arise in the course of employment, or if it does not, must be directed at the employee because of his employment.<sup>7</sup> Generally, the Board has held that personal disputes between coworkers are not compensable if they arise outside the scope of employment.<sup>8</sup>

### ANALYSIS

Appellant must establish all the elements of his claim in order to prevail. Before the medical evidence submitted can be considered, he must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of his duty. Appellant failed to adequately describe the circumstances of his injury although the Office requested this information in the letter dated October 17, 2007. It is not disputed that appellant suffered a cut lip and required medical care. Assuming that he was injured in an altercation, the Office must determine whether such occurrence was related to any factor of employment. Appellant must offer evidence to establish a connection between the altercation and his employment. However, there is no statement or other information in the file to explain exactly what happened or why, and the Office did not have any evidence upon which to base a conclusion that the events alleged in the claim occurred in the performance of duty.

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<sup>4</sup> *David P. Sawchuk*, 57 ECAB 316 (2006); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

<sup>5</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>6</sup> *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

<sup>7</sup> *Bruce Wright*, 43 ECAB 284 (1991).

<sup>8</sup> *George A. Rodriguez*, 57 ECAB 224 (2005).

Until appellant offers evidence to prove the fact of injury, its time, place and manner and that the injury was causally related to his federal employment, the Office need not proceed to evaluate the medical evidence in the file.

**CONCLUSION**

The Board finds that appellant has not established an event in the performance of duty. Appellant failed to establish those primary facts which would allow for an evaluation of the medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 19, 2007 is affirmed as modified.

Issued: August 5, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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