

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

R.V., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
BORDER PATROL, Employer**

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**Docket No. 12-1223
Issued: December 27, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 15, 2012 appellant filed a timely appeal of a December 16, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury on August 30, 2010 in the performance of duty.

FACTUAL HISTORY

On September 3, 2010 appellant, then a 25-year-old border patrol agent trainee, filed a traumatic injury claim alleging that on August 30, 2010 at 4:45 p.m. he injured his right elbow and wrist while moving weights. He stated, "I was training in the PT building and while putting away the weights I hyperextended my wrist."

¹ 5 U.S.C. § 8101 *et seq.*

The employing establishment provided appellant with a Form CA-16 Authorization for Examination and/or Treatment on September 3, 2010. This form indicated that he was weight training and experienced pain such that he was unable to extend his right wrist. Appellant underwent a magnetic resonance imaging (MRI) scan on September 3, 2010 which demonstrated a partial tear of the biceps tendon at its attachment to the proximal radius and a bone bruise of the proximal ulna.

Dr. Kenneth M. Yaw, a Board-certified orthopedic surgeon, examined appellant on September 8, 2010. He stated that appellant was lifting weights and, as he put the weight back onto the rack, the right side of the bar missed and started to drop. The bar caught appellant's outstretched thumb giving a high-energy forceful palmar abduction-type injury to the thumb with joint hyperextension. Appellant immediately noticed numbness and weakness in his forearm. Dr. Yaw found fairly significant weakness of appellant's wrist extensors and decreased sensation in his thumb, index and middle fingers as well as intrinsic weakness of finger abduction and a positive abnormal Froment's sign. He diagnosed a mixed neurologic deficit in the right upper extremity of unclear etiology involving all three major nerves to the right hand. Dr. Yaw stated, "It is unclear to me the exact mechanism by which this occurred since it involves radial, median and ulnar distributions. [Appellant's] neck and shoulders show no symptoms or apparent injury at the root or plexus level."

Dr. Yaw completed a form report on September 8, 2010 diagnosing neuropraxia right deep radial nerve, right median nerve and right ulnar nerve. He listed appellant's history as hyperflexion of the right thumb and wrist on August 30, 2010 with weight training. Dr. Yaw indicated with a checkmark "yes" that appellant's condition was caused or aggravated by employment activity. He completed an additional form on September 21, 2010 and diagnosed injury to right wrist extensors. Dr. Yaw again indicated that appellant's condition was caused by his employment activity.

A second MRI scan report dated September 3, 2010 noted a bone bruise on the medial aspect of the distal radius and injury with fluid in and about the triangular fibrocartilage.

On September 21, 2010 Dr. Yaw examined appellant and diagnosed probable intrasubstance tearing of his right extensor carpi radialis brevis with gradual resolution.

In a letter dated November 9, 2011, OWCP requested additional factual and medical evidence in support of appellant's claim. The factual evidence was not sufficient to support that he was in the performance of duty when the injury occurred and the medical evidence did not include a physician's opinion as to how his injury resulted in the diagnosed condition. OWCP allowed appellant 30 days to submit supportive information.

Appellant completed a narrative statement on November 25, 2011 and stated that his training position required weight training and weight training techniques. He stated that he was encouraged to continue physical training. Appellant stated that he was performing a shoulder press when he was injured and that physical fitness was required by his position. He noted that the injury occurred on the employing establishment premises after working hours. Appellant provided a course title syllabus for physical conditioning. He also provided a letter from the employing establishment congratulating him for passing the fitness test and noting that it was

very important for him to stay physically fit while waiting to enter duty. On October 5, 2009 appellant received a letter from the employing establishment noting that he would be attending physical training and listing the physical requirements including jumping jacks, push-ups, sit-ups, strengthening exercises and a three-mile run.

By decision dated December 16, 2011, OWCP denied the claim. It found that the incident occurred while in the performance of duty, but appellant had not submitted sufficient medical evidence to establish an injury due the accepted event.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ 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 actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

Appellant, a border patrol agent trainee, filed a traumatic injury claim alleging that he injured his right wrist while lifting weights at the employing establishment after his work shift ended. OWCP accepted that he was a federal employee and that his employment incident

² 5 U.S.C. §§ 8101-1893.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

occurred in the performance of duty. It found that appellant had not submitted sufficient medical evidence to establish that a diagnosed condition resulted from his employment incident.

In support of his claim for a traumatic injury, appellant submitted several reports from Dr. Yaw diagnosing medical conditions. Dr. Yaw stated that appellant sustained injury to right wrist extensors, neuropraxia right deep radial nerve, right median nerve and right ulnar nerve as well as a probable palmar abduction-type injury to the thumb with metacarpophalangeal joint hyperextension and intrasubstance tearing of his right extensor carpi radialis brevis with gradual resolution. He provided two form reports on which he indicated that appellant's diagnosed conditions were due to his employment injury with a checkmark "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸ Dr. Yaw did not offer medical reasoning in support of his conclusions on the form reports that appellant's diagnosed conditions were due to his employment. Furthermore, in his narrative report dated September 8, 2010, he stated, "It is unclear to me the exact mechanism by which [the injury] occurred since it involves radial, median and ulnar distributions. Appellant's neck and shoulders show no symptoms or apparent injury at the root or plexus level." While in two reports, Dr. Yaw indicated that appellant's injury was related to his employment event, he also stated that he was unable to explain how this injury occurred. Due to the divergent opinions expressed by Dr. Yaw, the Board finds that appellant has not provided the necessary reasoned medical opinion evidence needed to establish that he sustained an injury in the performance of duty.

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 met his burden of proof in establishing that he sustained an injury in the performance of duty.

⁸ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2011 Office of Workers' Compensation Programs decision is affirmed.

Issued: December 27, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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