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

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| **Z.C., Appellant** | ) | |
| **and** | ) | **Docket No. 12-330** |
| | ) | **Issued: June 19, 2012** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Brockton, MA, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On December 9, 2011 appellant filed a timely appeal from August 4 and October 13, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic rupture of the right Achilles tendon on April 20, 2011.

On appeal, appellant asserts that his voluntary participation in a private sector, off-premises fitness class after his scheduled tour of duty benefited the employing establishment by improving his ability to perform required defensive maneuvers and training him to pass required physical recertification tests.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On June 20, 2011 appellant, then a 49-year-old police officer, filed a traumatic injury claim (Form CA-1) claiming that he ruptured his right Achilles tendon on April 20, 2011 in the performance of duty.[2] His tour of duty was from 11:00 p.m. to 7:00 a.m. with Thursdays and Fridays off. Appellant explained that at 6:30 p.m. on Wednesday, April 20, 2011, he ruptured his right Achilles tendon during a self-defense tactics "krav maga" class at a private martial arts academy not on the employing establishment's premises. Although he was not on duty at the time of the accident, he contended the class should be considered work related as it taught skills similar to those required by his employment. Additionally, the physical activity would improve appellant's performance on required employing establishment physical fitness recertification tests.

In a June 28, 2011 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including corroboration that his participation in the krav maga class was a duty requirement or part of an authorized physical fitness plan. It afforded him 30 days to submit such evidence.

In a July 21, 2011 letter, appellant reiterated that he enrolled in the krav maga class to improve his general fitness and to practice required defensive maneuvers. He submitted a July 13, 2011 letter from the owner of the martial arts academy confirming the date and time of injury, noting that krav maga was very similar to the employing establishment's defensive tactics program.

In a July 27, 2011 letter, the employer asserted that appellant had enrolled in the krav maga class voluntarily. The class was not on the employing establishment "premises nor was it mandated. It was not agency sponsored and no vouchers were given to attend." The employing establishment explained that it did not require any of its police officers "to attend any fitness classes to prepare for their annual reexamination."

Appellant submitted reports from Dr. Bertram Zarins, an attending Board-certified orthopedic surgeon, who surgically repaired the ruptured tendon in late April 2011.

By decision dated August 4, 2011, OWCP denied appellant's claim finding that the April 20, 2011 injury did not occur in the performance of duty. It found that the employer did not require, sponsor or approve the krav maga training and did not own or control the premises of the class. OWCP further found that the employing establishment did not derive any substantial benefit from appellant's participation in the class.

In an August 31, 2011 letter, appellant requested reconsideration. He contended that an enclosed employing establishment training and testing materials established that the private krav maga class was an "implied" requirement of his federal employment.

[2] In a July 5, 2011 affidavit, an employing establishment supervisor stated that appellant telephoned him on April 29, 2011 stating that he injured himself during krav maga training on April 20, 2011.

By decision dated October 13, 2011, OWCP denied modification of the August 4, 2011 decision. It found that the employing establishment manuals did not establish that the private-sector defense class was recommended, approved or sponsored by the employer. Therefore, appellant did not establish that the April 20, 2011 injury occurred in the performance of duty.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA 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 FECA; 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

Section 8102(a) of FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[5] This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, arising out of and in the course of employment.[6] Whereas arising out of the employment addresses the causal connection between the employment and the injury, arising in the course of employment pertains to work connection as to time, place and activity.[7] For the purposes of determining entitlement to compensation under FECA, "arising in the course of employment," *i.e.*, performance of duty must be established before "arising out of the employment," *i.e.*, causal relation, can be addressed.[8]

With regard to recreational or social activities, the Board has held that such activities arise in the course of employment when: (1) they occur on the premises during a lunch or recreational period as a regular incident of the employment; or (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the service of the employee, brings the activity within the orbit of employment; or (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."[9]

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[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] 5 U.S.C. § 8102(a).

[6] *See Bernard E. Blum*, 1 ECAB 1 (1947).

[7] *See Robert J. Eglinton*, 40 ECAB 195 (1988).

[8] *Kenneth B. Wright*, 44 ECAB 176, 181 (1992).

[9] *S.B.*, Docket No. 11-1637 (issued April 12, 2012); *R.P.*, Docket No. 10-1173 (issued January 19, 2011); *Ricky A. Paylor*, 57 ECAB 568 (2006); *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993); *William D. Zerillo*, 39 ECAB 525 (1988); *Kenneth B. Wright*, *supra* note 8. *See also* A. Larson, *The Law of Workers' Compensation* § 22.00 (2010).

## ***ANALYSIS***

Appellant ruptured his right Achilles tendon on April 20, 2011 during a recreational self-defense class. He acknowledged that the class was not on the employing establishment's premises during his scheduled duty hours. As the class was not on the premises during a lunch or recreational period, it does not meet the first criteria to ascertain if a recreational activity arose in the course of employment.

Appellant contended that the employing establishment "expressly or impliedly required" him to participate in the self-defense class as it mandated he pass periodic physical recertification tests. His employer contended that it was not mandatory for appellant or his coworkers "to attend any fitness classes to prepare for their annual reexamination." The employing establishment did not sponsor or subsidize the class. When the degree of employer involvement descends from compulsion to mere encouragement, the tests include whether the employer sponsored or financed the activity and whether participation was voluntary.[10] The evidence establishes that appellant's participation in the self-defense class was voluntary, and not an express or implied requirement of his employment. Therefore, the class fails the second criteria of whether a recreational activity was within the performance of duty.

Appellant asserted that the self-defense class should be considered an employment activity because the employing establishment benefited from his increased level of fitness, thereby meeting the third criteria. The Board has held that the intangible value of improved health or morale, in and of itself, does not bring a recreational activity within the orbit of employment. In *William D. Zerillo*,[11] the Board held that an Achilles tendon rupture sustained during an off premises exercise program not sponsored or approved by the employing establishment was not compensable and the employer did not derive any substantial direct benefit except for the intangible value of improved employee health or morale common to all kinds of social and recreational activity. In *Wesley Crow*,[12] the Board held that a right leg injury sustained while running after work in a public park was not compensable, as the employing establishment did not specifically require any particular physical training program and derived only an intangible benefit from improved employee fitness. Similarly, in *Ricky A. Paylor*,[13] the Board held that an injury sustained from voluntary use of employing establishment fitness equipment on premises after work hours was not within the course of the claimant's employment as the activity was not required or encouraged by the employment establishment. Also, in *R.P.*,[14] the Board held that a leg injury sustained while running sprints on the employing establishment's premises during a work break was not compensable as running was not a required or approved activity and the employer did not derive a "substantial direct benefit from the activity beyond that intangible value of improvement in employee health and morale that is common to all kinds

[10] *Supra* note 8.

[11] *William D. Zerillo, supra* note 9.

[12] Docket No. 93-1323 (issued August 1, 1994).

[13] *Ricky A. Paylor, supra* note 9.

[14] *R.P., supra* note 9.

of recreational activity." Consequently, as appellant has not shown any nexus between his employment and the self-defense class, he has not established that the April 20, 2011 injury occurred in the performance of duty.

On appeal, appellant asserts that his voluntary participation in the fitness class benefited the employing establishment by improving his ability to perform required defensive maneuvers and training him to pass required physical recertification tests. As noted, improved employee health and morale are of intangible value and are insufficient to bring the self-defense class within the scope of appellant's federal employment. 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 a right Achilles tendon rupture in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 13 and August 4, 2011 are affirmed.

Issued: June 19, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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