

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

R.T., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Shreveport, LA, Employer**

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**Docket No. 12-221
Issued: January 10, 2013**

Appearances:
Eskridge E. Smith, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 10, 2011 appellant, through his attorney, filed a timely appeal from a September 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met his burden of proof to establish a traumatic left shoulder injury in the performance of duty on November 3, 2010.

On appeal, counsel asserts that the medical evidence as a whole is sufficient to establish a causal relationship between an accepted November 3, 2010 work incident and the claimed left shoulder injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 23, 2010 appellant, then a 58-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that he strained his left shoulder and the left side of his neck during defensive tactics training on November 3, 8 and 9, 2010 in the performance of duty. He asserted that the training entailed “excessive pulling, twisting, pulling and pressure” to his left shoulder and “pain in left side of neck.” The claim was controverted by the employing establishment.

In an August 11, 2011 letter, OWCP advised appellant of the type of additional evidence needed for his claim, including medical evidence from his attending physician explaining how and why participating in defensive tactics training on November 3, 2010 would cause the claimed left shoulder injury. Appellant was afforded 30 days in which to submit such evidence.

Appellant submitted an August 4, 2011 e-mail to a Claudette Reimonenq (but printed by a Loraine J. Morton) which stated that appellant had injured his left shoulder during training on November 3, 2010. He claimed to have reported the injury to the employer’s occupational health unit on November 23, 2010.² Appellant remained asymptomatic until he consulted his private physician on June 29, 2011, who diagnosed a left rotator cuff tear. Appellant submitted medical evidence.

In November 23, 2010 reports, Dr. Charles Black, an employing establishment physician, noted tenderness over the left bicipital groove, restricted range of motion and pain since a November 3, 2010 training incident. He diagnosed tendinitis and administered a Kenalog injection to the left shoulder. Dr. Black noted duty restrictions through December 3, 2010. Dr. S. Tanga, an employing establishment physician, noted that appellant’s symptoms improved as of November 29, 2010 and released him to full duty.

In a June 29, 2011 report, Dr. Larry Flake, an attending Board-certified family practitioner, noted that appellant sustained a left shoulder injury during defensive training on March 11, 2011. Dr. Flake noted that appellant’s pain symptoms were relieved by an injection administered at the employing establishment. On examination, he noted limited left shoulder motion, muscle weakness and pain. Dr. Flake ordered a magnetic imaging (MRI) scan of the left shoulder, performed on July 8, 2011, which demonstrated a left rotator cuff tear at the insertion of the supraspinatus tendon.

In an August 22, 2011 report, Dr. Flake opined that the left shoulder injury occurred during mandatory training on November 3, 8 and 9, 2010, with a cumulative effect from training incidents on each date. He diagnosed rotator cuff syndrome of the left shoulder, neuralgia/neuritis and arthralgia. Dr. Flake provided work restrictions.

² The employing establishment submitted an incident report corroborating that appellant telephoned his supervisor, Gary Alderman, on November 23, 2010 advising that he hurt his shoulder 20 days earlier on November 3, 2010 during training. The employing establishment contacted appellant’s training supervisor who confirmed that appellant participated in training on November 3, 8 and 9, 2010 but at no time did appellant note an injury.

Dr. G. Michael Haynie, an attending Board-certified orthopedic surgeon, submitted August 31 and September 7, 2011 reports and diagnosed rotator cuff syndrome due to a November 2010 work-related injury. He recommended surgery.

By decision dated September 19, 2011, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that appellant had established that the November 3, 2010 incident occurred at the time, place and in the manner alleged. However, OWCP further found that the medical evidence did not provide a diagnosis connected to that incident.

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

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ 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.⁶

ANALYSIS

Appellant claimed that he sustained a left shoulder injury on November 3, 2010 while participating in mandatory defensive training at work. The evidence supports that appellant participated in the training as alleged. OWCP denied the claim by September 19, 2011 decision, finding that the medical evidence did not contain a definite diagnosis attributable to the November 3, 2010 incident. Although the evidence did establish a diagnosis of rotator cuff syndrome of the left shoulder, arthralgia, neuralgia and tendinitis, the Board finds that OWCP properly denied the claim due to a lack of medical evidence establishing that the diagnosed conditions were caused by the accepted incident.

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 *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

Dr. Black diagnosed tendinitis on November 23, 2010, improved by a left shoulder injection. However, Dr. Black did not address the cause of the left shoulder tendinitis. Similarly, Dr. Haynie diagnosed left rotator cuff syndrome due to a November 2010 occupational injury, but did not explain how the training exercise caused the injury.

Dr. Flake stated in a June 29, 2011 report that appellant injured his shoulder on March 11, 2011 during defensive training and underwent an injection at the employing establishment's health unit. He changed his opinion on August 22, 2011, stating that appellant sustained an initial left shoulder injury during defensive training on November 3, 2010, and then exacerbated that injury on November 8 and 9, 2010. On August 22, 2011 he opined that appellant's shoulder was injured during the training "probably an accumulation of exposures during these dates." Dr. Flake diagnosed rotator cuff syndrome of the left shoulder, arthralgia and neuralgia. However, he did not provide any medical rationale explaining how and why defensive training on any date would have caused or aggravated the diagnosed left shoulder conditions. As Dr. Flake did not provide a pathophysiologic explanation supporting causal relationship, his opinion is also insufficient to meet appellant's burden of proof.⁷

On appeal, counsel asserts that the medical evidence as a whole is sufficient to establish a causal relationship between an accepted November 3, 2010 work incident and the claimed left shoulder injury. As stated, the medical evidence fails to establish a causal relationship between the accepted incident and the diagnosed condition.

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 to establish a traumatic left shoulder injury in the performance of duty on November 3, 2010.

⁷ See *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2011 is affirmed.

Issued: January 10, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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