

FACTUAL HISTORY

On April 21, 2011 appellant, then a 55-year-old motor vehicle operator, filed a traumatic injury claim alleging that at 1:00 p.m. on March 17, 2011 as a result of falling several times during a patient bowling outing he sustained cervical cord compression, numbness and tingling in both hands, numbness in his left leg, loss of strength and balance while walking. He stopped work on April 11, 2011. Appellant's tour of duty was from 6:00 a.m. to 2:00 p.m., Monday through Friday. On the claim form, the employing establishment indicated that he was in the performance of duty.

By letter dated May 24 2011, OWCP advised appellant that initially, his claim appeared to be a minor injury that resulted in minimal or no lost time from work. Because the employing establishment did not controvert continuation of pay or challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved and the merits of the claim had not been formally considered. The claim was reopened for consideration because appellant contended that, while working as a motor vehicle operator, he sustained an injury as a result of a fall during an employing establishment bowling outing. It informed him that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days. OWCP also requested that the employing establishment submit medical evidence if appellant was treated at its medical facility.

On June 5, 2011 appellant contended that he was on duty on March 17, 2011 while participating in a recreational activity authorized by the employing establishment. He was bowling when he slipped and fell awkwardly forward. Appellant broke his fall with his extended arms and landed hard on his knees. At the time of injury, he was responsible for transporting the recreational therapy department to the bowling alley. Appellant stated that he was not on the employing establishment's premises at the time of injury, but was assigned to transport the recreational therapy department to the bowling alley by his supervisor. Although he was not required to participate in the recreational activity, he was included in the group participation by a recreation therapy coordinator. Appellant had not previously participated in other events.

Medical reports dated April 3 to 26, 2011 addressed appellant's diagnoses of cervical spondylosis with myelopathy, herniated disc at C4-5, C5-6 and C6-7 with cervical spinal cord compression and cervical stenosis and an April 18, 2011 surgery to treat a herniated disc condition.

In a July 14, 2011 decision, OWCP denied appellant's claim. It found that the evidence was sufficient to establish that the March 17, 2011 incident occurred as alleged; however, the medical evidence was insufficient to establish that his claimed cervical injury and need for cervical surgery were caused by the accepted employment incident.

By letter dated August 3, 2011, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

In an August 30, 2011 report, Dr. Cristina P. Orfei, a Board-certified neurologist, advised that appellant had cervical disc herniation at C4 and C5 with cord compression causally related to the March 17, 2011 employment incident.

In an October 19, 2011 decision, OWCP's hearing representative set aside the July 14, 2011 decision and remanded the case, finding that the issue of performance of duty had not been properly addressed. OWCP was instructed to obtain a statement from the employing establishment addressing whether appellant's participation in the bowling activity on March 17, 2011 occurred in the performance of duty under its procedures.

By letter dated November 15, 2011, OWCP requested that the employing establishment address whether it derived any benefit from appellant's participation in the bowling activity, the extent to which it sponsored or directed the activity and whether his participation was mandatory or optional.

In an e-mail dated December 1, 2011 and letter dated December 2, 2011, Molette P. Randle, a human resources specialist at the employing establishment, stated that other than the transportation of patients, the employing establishment did not derive any benefit from appellant's participation in the outing. The employing establishment noted that fleet operations provided transportation for the recreation therapy section which administered a program that assisted patients with readjustment to life without the use of drugs or alcohol. On the date in question, a recreational therapist asked appellant if he preferred to participate in the activity instead of sitting and waiting for the group's departure. The employing establishment contended that he participated in the recreational therapy outing on his own accord.

A description of appellant's motor vehicle position provided, among other things, that he was responsible for the operation and maintenance of motor vehicles used to transport patients and supplies.

In reports dated November 17, 2011, Dr. Orfei advised that appellant's cervical disc herniation and compressive myelopathy and resultant surgery were caused by the March 2011 employment incident. She set forth his physical limitations and concluded that he was unable to perform his motor vehicle operator duties.

In a December 19, 2011 decision, OWCP denied appellant's claim, finding that the evidence was sufficient to establish that the March 17, 2011 incident occurred as alleged, but that the medical evidence was not sufficiently rationalized to establish that he sustained a cervical condition that necessitated surgery due to the accepted employment incident.

By letter dated December 27, 2011, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In a December 15, 2011 report, Dr. Orfei reiterated her prior opinion that appellant's fall on March 17, 2011 caused his herniated cervical disc with cord compression.

Medical records from a hospital and the employing establishment's health unit dated January 19, 2012 stated that appellant could return to work without restrictions on that date.

During the March 21, 2012 telephone hearing, appellant testified that on March 17, 2011 he transported veterans to a bowling outing and that he could have either remained at the outing or returned later for pickup. He stayed after the event organizer told him that his supervisor authorized his participation because he was needed to complete a team. The organizer paid for appellant's bowling shoes.

In a May 11, 2012 decision, OWCP's hearing representative affirmed as modified the December 19, 2011 decision. She found that appellant did not sustain an injury on March 17, 2011 in the performance of duty. There was no evidence establishing that the employing establishment either required him to bowl during work hours or that it received any benefit from his participation in this activity.

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.² 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.³

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 or her duty.⁴ 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.⁵ 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.⁶ 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.⁷

With regards 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

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ 5 U.S.C. § 8102(a).

⁵ *See Bernard E. Blum*, 1 ECAB 1 (1947).

⁶ *See Robert J. Eglinton*, 40 ECAB 195 (1988).

⁷ *Kenneth B. Wright*, 44 ECAB 176, 181 (1992).

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.⁸

ANALYSIS

Appellant sustained cervical cord compression and experienced numbness and tingling in his hands, numbness in his left leg on March 17, 2011 during a recreational bowling game. He and the employing establishment acknowledged that the bowling game took place in a bowling alley in Hillside, Illinois. The claimed injuries are not covered under the first criterion for recreational and social activities as the injuries did not occur on the employing establishment premises, but instead occurred in a bowling alley, located off the employing establishment premises.

The second criterion is whether the employing establishment required appellant to participate in the bowling game or otherwise made the activity part of his services as an employee. Appellant noted that, although the employing establishment did not mandate participation in the bowling game, it encouraged participation. He stated that the activity organizer asked him to participate, advised him that his supervisor authorized his participation and paid for his bowling shoes. When the degree of employer involvement descends from compulsion to mere sponsorship or encouragement, the tests include whether the employer sponsored or financed the activity and whether participation was voluntary.⁹ The record establishes that the employing establishment sponsored the bowling game as part of its recreation therapy to help veterans readjust to life without the use of drugs or alcohol. Appellant's participation was voluntary and not an express or implied requirement of his employment. His position description does not require him to participate in such an activity. The Board has held that, if attendance at an event is voluntary and there is no direct, substantial benefit to the employing establishment, this outweighs its sponsorship of the event when determining whether an activity occurred in the course of employment.¹⁰ The Board finds that the bowling activity was not one which appellant was compelled to attend. Participation in the recreational activity was not part of his job or an activity for which he would be evaluated. It was a voluntary activity.

Appellant has also failed to satisfy the third criterion that the employing establishment derived substantial direct benefit from the March 17, 2011 bowling game. The employing establishment stated that it did not derive any benefit from his participation in the bowling activity. It stated that appellant was only asked to participate so that he could avoid hearing to wait for the group's departure. Appellant did not submit any evidence to support his contention that his participation in the activity was necessary to complete a team.

⁸ *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); *supra* note 7; *William D. Zerillo*, 39 ECAB 525 (1988). *See also* A. Larson, *The Law of Workers' Compensation* § 22.00 (2012).

⁹ *Supra* note 7.

¹⁰ *Barbara Roy*, 42 ECAB 960 (1991).

As appellant has not shown sufficient nexus between his employment and the bowling activity, the Board finds that he has not established that the March 17, 2011 injuries occurred 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 a cervical condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2012 and December 19, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 16, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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