

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

G.P., Appellant)

and)

U.S. CUSTOMS & BORDER PROTECTION,)
FIELD OPERATIONS ACADEMY, Glynco, GA,)
Employer)

**Docket No. 13-407
Issued: May 21, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2012 appellant filed a timely appeal from the September 28, 2012 Office of Workers' Compensation Programs' (OWCP) decision which denied his claim. 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 met his burden of proof to establish that he sustained an injury in the performance of duty on December 18, 2006.

FACTUAL HISTORY

On December 21, 2006 appellant, then a 59-year-old customs border protection officer, filed a traumatic injury claim form alleging an injury to his left shoulder and arm in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty on December 18, 2006. He was doing defense tactics and drills and fell backwards. Appellant did not stop work. In a letter dated December 28, 2006, Karen Knox, an injury compensation coordinator, noted that he sustained injury while attending training at the employing establishment field operations academy.

In a December 21, 2006 treatment note, Dr. Tom V. Willis, a Board-certified surgeon and employing establishment physician, noted appellant's complaints of left shoulder pain and numbness in the left arm for several weeks. He obtained a history that appellant fell on the shoulder. Dr. Willis assessed pain in the left anterior shoulder with tender mass, palpable. He also noted appellant's status on December 27, 2006.

In a December 27, 2006 attending physician's report, Dr. Michael Sullivan, a Board-certified orthopedic surgeon, stated that appellant injured his left shoulder during required work activity. He checked a box "yes" to indicate that appellant's condition was work related.

In a January 5, 2007 left shoulder magnetic resonance imaging (MRI) scan report, Dr. S. Boyd Eaton, a Board-certified radiologist, noted that appellant had a history of pain and restricted motion secondary to an exercise-related injury. The MRI scan showed supraspinatus tendinosis, rotator cuff pathology, but no tear, which might be related to a spur projecting from the acromial tip and fluid near the acromial attachment. Dr. Easton noted that the fluid might indicate a ganglion cyst or a bursal fluid collection.

In a letter dated January 26, 2012, OWCP requested additional factual and medical evidence from appellant and the employing establishment. Appellant was advised that his claim was initially viewed as a minor injury claim but the file was reopened for further development when he inquired about payment of a medical bill. No additional evidence was received.

By decision dated March 9, 2012, OWCP denied appellant's claim, finding that he did not establish an injury as alleged. It found that the medical evidence was insufficient to establish that his condition was caused by employment duties.

On April 2, 2012 appellant requested a hearing, which was held on July 16, 2012. He submitted a December 27, 2006 disability certificate and report in which Dr. Sullivan noted that appellant had shoulder pain, consistent with impingement and pain radiating into his neck and fingers over the past few weeks. Dr. Sullivan determined that appellant had a left shoulder mass of undetermined pathology and neck pain which could be radiating from the shoulder. He opined that it could be a primary neck problem. Dr. Sullivan advised that appellant could return to work with restrictions to include no pushups or pull ups. In a January 5, 2007 progress note, he noted a history of radiating left shoulder pain and a mass over his shoulder that began about six weeks earlier "after defensive tactics" that involved "a lot of vigorous training and falling essentially contact fighting as part of his law enforcement training" which he did not previously do. Regarding causal relationship, Dr. Sullivan advised that "in the same way that trauma and his vigorous contact could cause shoulder pain, which radiates up the neck, so could it cause a neck problem that radiates to the shoulder. As [appellant's] shoulder is clearly workmen's compensation related so should be his neck." Dr. Sullivan continued appellant's restrictions. In a January 12, 2007 treatment note, he diagnosed a cyst on the posterior aspect of the left shoulder

and advised no pushups or pull ups. Also received was a January 3, 2007 electromyography scan that was consistent with C7-8 radiculopathy.

By decision dated September 28, 2012, OWCP's hearing representative affirmed the March 9, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 timely filed within the applicable time limitation period of FECA³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 or she 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 of medical evidence, to establish that the employment incident caused a personal injury.⁷

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

Appellant alleged that he was doing defense tactics and drills and fell backwards on December 18, 2006. OWCP accepted that he fell on that date. The Board finds that the medical evidence is not sufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that the fall on December 18, 2006 caused a personal injury.

² 5 U.S.C. §§ 8101-8193.

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

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

⁷ *Id.*

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant provided December 27, 2006 reports from Dr. Sullivan, who diagnosed shoulder pain consistent with impingement and pain radiating into the neck and fingers. Dr. Sullivan also noted a left shoulder mass of undetermined pathology. In a December 27, 2006 form report, he stated that appellant injured his left shoulder during required work activity and he checked a box “yes” to indicate that this was work related. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” on a medical form report without further explanation or rationale is of diminished probative value.⁹ Dr. Sullivan did not explain the basis for his opinion on causal relationship. On January 5, 2007 he noted a history of radiating left shoulder pain that began about six weeks earlier “after defensive tactics” that involved “a lot of vigorous training and ... essentially contact fighting as part of his law enforcement training.” Dr. Sullivan supported causal relationship, advising that, “in the same way that trauma and his vigorous contact could cause shoulder pain, which radiates up the neck, so could it cause a neck problem that radiates to the shoulder. As [appellant’s] shoulder is clearly workmen’s compensation related so should be his neck.” The Board finds that Dr. Sullivan’s opinion on causal relationship is of diminished probative value as he did not explain the manner or process by which training on December 18, 2006 caused or contributed to a diagnosed condition. Dr. Sullivan also appears to have an incorrect history of injury as he attributed appellant’s condition to activities occurring several weeks before December 18, 2006 and did not show awareness of the December 18, 2006 falling incident.¹⁰ The other records from him did not specifically address whether work factors caused a diagnosed condition. Consequently, the Board finds that this evidence is insufficient to establish appellant’s claim.

In a December 21 and 27, 2006 treatment notes, Dr. Willis noted appellant’s status but he did not specifically address whether appellant’s work activities on December 18, 2006 caused a diagnosed condition. Similarly, reports of diagnostic testing are also insufficient to establish the claim as these reports do not specifically address whether the December 18, 2006 work incident caused a diagnosed medical condition.¹¹

In the present case, there is no reasoned medical evidence from a physician explaining how and why the employment activities on December 18, 2006 caused or aggravated appellant’s shoulder condition. For these reasons, appellant has not established that the December 18, 2006 employment incident caused or aggravated a specific injury.

On appeal, appellant disagreed with OWCP’s findings and argued that the medical evidence supported that his condition was work related. However, as noted above, the evidence was insufficient to establish that the employment activities on December 18, 2006 caused or aggravated his shoulder condition.

⁹ *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹⁰ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value). An injury occurring over more than a single workday or shift should be claimed by filing an occupational disease claim. See 20 C.F.R. § 10.5(q).

¹¹ Although Dr. Eaton’s January 5, 2007 MRI scan report noted a history of an exercise related injury, he did not address the December 18, 2006 incident nor did he specifically indicate if the injury was work related.

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 on December 18, 2006.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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