

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

Y.T., Appellant

and

**DEPARTMENT OF THE NAVY, MIRAMAR
FIRE DEPARTMENT, San Diego, CA, Employer**

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**Docket No. 14-406
Issued: May 14, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 12, 2013 appellant filed a timely appeal of a September 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her 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 her burden of proof to establish that she sustained a traumatic injury on March 26, 2013, as alleged.

FACTUAL HISTORY

On March 27, 2013 appellant, then a 40-year-old fire inspector, filed a traumatic injury claim alleging that on March 26, 2013 she sustained a sharp pain in her left knee. She stated, "I was doing an exercise with my forearms on the ground with my legs extended. I put my knees

¹ 5 U.S.C. § 8101 *et seq.*

down, rolled back to sit on my heels and used the bed to stand up. When I woke up the next day, I put my feet on the ground to stand up and felt a sharp pain in my left knee.” Appellant’s injury occurred at 7:15 p.m. at Fire Station 61, Room 13 at the employing establishment.

The employing establishment controverted appellant’s claim. Tina R. Leary, appellant’s supervisor, completed a statement on March 27, 2013. She stated that appellant was not injured in the performance of duty. Ms. Leary noted that the activity was recreational exercising and was not part of any training or assigned duties for her position. She stated that appellant was not in any agency-approved physical fitness program.

In a letter dated April 3, 2013, OWCP requested additional factual and medical evidence from appellant in support of her claim. Dr. Gregory J. Basiago, a Board-certified family practitioner, examined appellant on March 27, 2013 and diagnosed left knee pain. Dr. Rupina Mann, a physician Board-certified in physical medicine and rehabilitation, examined appellant on April 3, 2013 and diagnosed left knee medial joint line pain with no locking. On April 17, 2013 she diagnosed left knee strain. Dr. Mann noted that appellant was at work and doing exercises on the floor. Appellant showered and went to bed with no pain. She went to sleep at the employing establishment and woke up the next morning with pain in the left knee. Dr. Mann stated, “The stated mechanism is consistent with my clinical examination findings and no information has been presented that would indicate a cause other than the alleged employment event/exposure. The subjective and objective findings are consistent.”

The employing establishment stated that appellant did not take the required steps to register for the March 19, 2010 station order for a civilian fitness program. The program provided excused absences of no more than three hours per employee per week. The fitness program must take place at the assigned duty station.

By decision dated May 16, 2013, OWCP denied appellant’s claim finding that she did not establish that the injury arose during the course of her employment while she was performing compensable work duties.

Appellant requested a review of the written record before an OWCP hearing representative on May 23, 2013.

On April 8, 2013 appellant noted that she worked a 56-hour a week schedule which required her to stay overnight on Tuesdays. She arrived at work at 6:30 p.m. and, after making her bed, performed an exercise called planking. Appellant completed the exercise, put her knees down and rolled back to sit on her heels and stood up. She then showered and called her husband. Appellant did not feel any pain. She went to sleep and awoke at 5:00 a.m. on March 27, 2013 and felt excruciating pain in her left knee when she put her feet on the floor to rise. Appellant provided a copy of her employment contract which required her to work 56 hours a week and for a tour of duty from 6:30 a.m. to 3:00 p.m. On April 8, 2013 she stated that she was allowed to eat, sleep, read, listen to the radio or perform other similar activities when not performing active duties.

By decision dated September 12, 2013, OWCP’s hearing representative modified OWCP’s May 16, 2013 decision to accept that appellant arose from her bed within the

performance of her duties. The hearing representative found, however, that the medical evidence was not sufficient to establish that she sustained a left knee strain as the result of arising from her bed in the performance of duty.

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 be determined whether a “fact of injury” has been established. 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 The employee must also submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸

Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.⁹

² 5 U.S.C. §§ 8101-8193.

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).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

ANALYSIS

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a left knee strain in the performance of duty on March 26, 2013 as alleged.

In support of her claim, appellant submitted a note from Dr. Basiago who examined her on March 27, 2013 and diagnosed left knee pain. The Board has held that the diagnosis of “pain” is not a firm medical diagnosis.¹⁰ Dr. Basiago did not provide a firm diagnosis of appellant’s left knee and his report is insufficient to meet appellant’s burden of proof.

Dr. Mann diagnosed left knee strain. She listed the injury as occurring on March 26, 2013 at 7:15 p.m. as noted by appellant. Dr. Mann noted that appellant woke up the next morning with pain in the left knee. She opined generally that appellant’s activities were consistent with the findings of left knee strain. The Board finds that her report does not provide sufficient medical reasoning to support a causal relationship between appellant’s diagnosed left knee strain and her employment activities. Dr. Mann did not adequately explain how or why appellant’s action of arising from her bed resulted in a knee strain. She did not provide a full medical history pertaining to appellant’s left knee or address how appellant’s activity the prior evening was competent to produce the diagnosed condition. This report is not sufficient to meet appellant’s burden of proof.

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 failed to submit the necessary medical opinion evidence to establish her claim for a traumatic injury.

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2014
Washington, DC

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

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

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