

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

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R.D., Appellant

and

DEPARTMENT OF THE ARMY, MILITARY  
SCIENCE DEPARTMENT, EASTERN  
OREGON UNIVERSITY, La Grange, OR,  
Employer

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**Docket No. 14-1413**  
**Issued: October 28, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 6, 2014 appellant filed a timely appeal from a March 20, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on June 17, 2013.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence as its review of the case is limited to the evidence of record that was before OWCP at the time it rendered its final decision. 20 C.F.R. § 501.2(c)(1). Appellant may submit the evidence to OWCP with a valid request for reconsideration, as noted above.

On appeal, appellant asserts that he was on duty attending training on June 17, 2013 when he was bitten by bats. He indicated that thereafter he underwent a number of prophylactic injections.

### **FACTUAL HISTORY**

On August 8, 2013 appellant, then a 21-year-old Army Reserve Officers' Training Corps (ROTC) cadet filed a traumatic injury claim alleging that on June 17, 2013 he sustained bat bites on his left great toe and right small toe. He indicated that the claim was for medical treatment only. Lieutenant Alan K. Kerr signed the claim form as a witness and stated that appellant returned from South America with bites on both feet and submitted documentation of medical treatment. Richard McKim, a supervisor, signed the claim form. In an attached statement, appellant indicated that during a 48-hour jungle training exercise with the Guyana Defense Force in South America, he was bitten by bats while in his shelter. He indicated that he briefly visited a local medical facility but no vaccinations were administered. An unsigned "statement of medical examination and duty status" indicated that appellant was treated at the Ireland Community Army Hospital at Fort Knox, Kentucky on July 31, 2013 by Paul Estes for an accident that occurred during a 48-hour training exercise when he had two simultaneous bat bites.

By letter dated February 7, 2014, OWCP informed appellant that the evidence received was insufficient to support his claim because it had not received a "line of duty" determination from the Military Science Officer of his ROTC program. A copy of the letter was sent to the Eastern Oregon University ROTC unit. Appellant was given 30 days to furnish the requested documentation.

In an August 9, 2013 treatment note, Dr. Gregory Hoskins, Board-certified in emergency medicine, described the history of injury and indicated that appellant had received one injection of Rabavert at Fort Knox. He prescribed additional rabies vaccinations and appellant was administered rabies vaccines that day and additional vaccines on August 13 and 29 and September 25, 2013.

By decision dated March 20, 2014, OWCP denied the claim on the grounds that appellant had not provided a "line of duty" certification.

## LEGAL PRECEDENT

Section 8140 of FECA has extended federal workers' compensation benefits coverage to members of the ROTC. Section 8140 provides as follows:

“(a) Subject to the provisions of this section, this subchapter applies to a member of or applicant for membership in, ROTC of the Army, Navy or Air Force who, suffers an injury, disability or death incurred or an illness contracted in line of duty --

(1) while engaged in a flight or flight instruction under [C]hapter 103 of [T]itle 10; or

(2) during the period of the member's attendance at training or a practice cruise under [C]hapter 103 of [T]itle 10, United States Code, beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.

(b) For the purpose of this section, an injury is incurred in the line of duty only if it is the proximate result of the performance of military training by the member concerned or of his travel to or from that training, during the periods specified by subsection (a)(2) of this section.”<sup>3</sup>

Section 4.600.6(b)(3) of OWCP procedures provide that, for injuries that occur on or after October 1, 1988, “[t]he Secretary of the military department (or his or her designee) determines whether or not an injury was incurred in the line of duty, subject to review by OWCP.”<sup>4</sup> The section then refers to section 4.600.5(b)(5) for further explanation.<sup>5</sup> Section 4.600.5 indicates that matters pertaining to time, fact of injury and causal relationship will be determined as in other claims under FECA.<sup>6</sup> It states that:

“The military department concerned is responsible for making a ‘line of duty’ determination, subject to review by OWCP and should provide the appropriate statutory citation in support of that determination. ‘Line of duty’ determinations made by the military should be accorded great weight. It should be noted that the term, ‘line of duty,’ should be interpreted in the military context and is not synonymous with the term ‘performance of duty’ as usually interpreted under the FECA. There are many circumstances in which a member of the military would be considered to be in the ‘line of duty,’ while a civilian federal employee would not be considered in the ‘performance of duty.’ One example of this difference

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<sup>3</sup> 5 U.S.C. § 8140.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers' Training Corps*, Chapter 4.600.6(b)(3) (May 1996).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at Chapter 4.600.6(a); see *Scott B. Schlegel*, Docket No. 05-277 (issued April 5, 2005).

would be in the instance of an ROTC cadet who was authorized to take leave from a training exercise for purposes of personal travel and was injured when returning to the military base. The military would interpret this injury as having occurred in the 'line of duty,' since the travel was authorized and took place while travelling to training. A civilian employee under similar circumstances would not be considered to be in the 'performance of duty'."<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant did not establish an injury in the performance of duty because he did not furnish the required "line of duty" verification requested. While Lieutenant Kerr signed the claim form as a witness to the injury and Mr. McKim signed the form as appellant's supervisor, neither has been identified as "the secretary of military department or his or her designee," who, under OWCP procedures, is responsible for determining whether an ROTC claimant was in the line of duty when injured.<sup>11</sup>

As appellant did not establish that he was in the line of duty when he sustained the bat bites, he did not establish a required element of his claim.

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 did not establish that he sustained an injury in the line of duty on June 17, 2013.

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<sup>7</sup> *Id.* at Chapter 4.600.5(b)(5).

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> Federal (FECA) Procedure Manual, *supra* notes 3-5; compare *Dustin E. Marlett*, 54 ECAB 602 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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