United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 14-2063**
	)	**Issued: January 21, 2015**
U.S. MARINE CORPS, LOGISTICS BASE, Albany, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 29, 2014 appellant filed a timely appeal from a March 31, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 established a right arm injury in the performance of duty on July 10, 2013.

[1] A claimant has 180 days to file an appeal of a final OWCP decision. In this case the 180th day from March 31, 2014 was Saturday, September 27, 2014. Pursuant to 20 C.F.R. § 501.3(f)(2), appellant had until September 29, 2014 to timely file an appeal.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 8, 2013 appellant, then a 58-year-old information technology specialist, filed a traumatic injury claim alleging an injury on July 10, 2013. He alleged that, while performing pull-ups in an exercise program at the employing establishment he ruptured his right bicep muscle. An employing establishment human resources administrator submitted a September 9, 2013 letter controverting the claim for compensation. The administrator acknowledged that appellant was participating in an employing establishment health and wellness exercise program, and that video evidence indicated that he was performing pull-ups on July 10, 2013. According to the administrator, the video showed appellant performed three sets of pull-ups and then did further exercise without showing signs of pain.

By decision dated September 20, 2013, OWCP denied the claim for compensation. It found the evidence did not establish an incident as alleged, and also noted that no medical evidence had been submitted.

Appellant requested a review of the written record and submitted medical evidence from Dr. Lyle Norwood, a Board-certified orthopedic surgeon. In a report dated July 12, 2013, Dr. Norwood provided a history that appellant was doing pull-ups when he had "a pop and pain in his right shoulder." He provided results on examination, noting a large bulge of the biceps distally, and also noted x-rays showed significant spurring, and arthritis of the acromioclavicular (AC) joint. Dr. Norwood diagnosed acute tear of the biceps tendon, AC joint arthritis, and questionable rotator cuff tear.

In a report dated July 22, 2013, Dr. Norwood indicated that appellant did not have a right rotator cuff tear. He stated that appellant needed surgery on the right shoulder, including subacromial decompression, acromioplasty, and tenodesis of the biceps. Dr. Norwood also noted that appellant had left shoulder multiple tendon rotator cuff tear and AC joint arthritis.

Appellant submitted an "operative report" dated August 9, 2013 from Dr. Norwood. The report contains headings of "What," "How," and "When" containing redactions, and hand written notes with illegible initials. The handwriting appears to state "R (left)" shoulder, "Pull-ups" and July 10, 2013 under these headings. As to the typed portion of the report, the surgery is described as diagnostic arthroscopy, operative arthroscopy, subacromial decompression, acromioplasty, rotator cuff repair, and open tenodesis of biceps.

In a report dated August 21, 2013, Dr. Norwood stated that appellant was "a short week status post surgery." By report dated September 18, 2013, he stated that appellant was five weeks postsurgery. Dr. Norwood stated that appellant should not lift more than five pounds with no overhead lifting.

The employing establishment submitted a letter dated February 24, 2014, again controverting the claim. Its administrator stated the last set of pull-ups was after 4:00 p.m., which was the end of appellant's work shift.

By decision dated March 31, 2014, an OWCP's hearing representative modified the September 20, 2013 decision to reflect that an incident had occurred in the performance of duty.

The hearing representative found the evidence established appellant was performing pull-ups while in an employing establishment sponsored exercise program at the worksite, and received administrative time while exercising. The claim was denied on the grounds that the medical evidence did not establish a diagnosed injury casually related to the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[5] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient, and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[6]

Rationalized medical opinion evidence is medical evidence based on a complete factual, and medical background, of reasonable medical certainty, and supported by sound medical rationale explaining the nature of the relationship between the diagnosed condition, and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

In the present case, the hearing representative accepted as factual that appellant was in the performance of duty on July 10, 2013 when he performed pull-ups during an exercise session at the employing establishment. This is consistent with Board precedent regarding participation

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

[6] *Id.*

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

in employing establishment sponsored exercise programs on premises.[8] The evidence showed that appellant performed pull-ups during the exercise period on July 10, 2013.

The issue is whether the medical evidence is sufficient to establish a diagnosed condition casually related to the employment incident. Dr. Norwood has provided reports indicating that he treated appellant commencing July 12, 2013 with diagnoses of acute tear of the biceps tendon, AC joint arthritis, and questionable rotator cuff tear. It appears that appellant underwent surgery on August 9, 2013, but the report of record is of little probative value to the compensation claim. As the hearing representative noted, it is not clear from the record who initialed the notes. Even if it were established that Dr. Norwood performed right shoulder surgery and provided the handwritten notes, the reference to "pull ups" does not constitute sound medical reasoning. In addition, Dr. Norwood must explain, with sound medical reasoning, how a specific diagnosis was causally related to the employment incident.

The medical evidence of record does not include a rationale medical opinion on the issue. It is appellant's burden of proof, and for the reasons noted, he did not meet his burden in this case.

On appeal, appellant stated that he was submitting an addendum to the August 9, 2013 report clearing up the issue of handwritten changes. The Board cannot review new evidence on appeal.[9] Appellant also argues that, while OWCP stated that he performed three sets of 10 pull-ups, he stopped before he finished the third set. The basis for the denial of the claim was not factual evidence regarding the specific number of pull-ups. Appellant asserted that the video evidence would establish causal relationship. The issue is a medical issue, and can be established only with probative medical evidence. The medical evidence of record is not sufficient in this case.

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 meet his burden of proof to establish a traumatic right arm injury on the date claimed.

[8] *See Lucia Martinez,* Docket No. 02-676 (issued September 13, 2002) (claimant was in the performance of duty when injured on premises, during work hours at employing establishment sponsored recreational activity); *see also Michael A. Vestuto,* 47 ECAB 632 (1996).

[9] 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2014 is affirmed.

Issued: January 21, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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