

FACTUAL HISTORY

This case has previously been before the Board. By decision dated February 2, 2015,² the Board set aside OWCP's September 26, 2013 decision and remanded the case to OWCP for further development of the evidence regarding whether appellant sustained an injury in the performance of duty on August 22, 2007.³ The Board noted that the record remained vague with respect to whether he filed a timely claim for a work-related injury on August 22, 2007 and that, on remand to OWCP, additional evidence should be obtained regarding this matter, including whether his immediate supervisor had actual knowledge of his claimed August 22, 2007 injury within 30 days. The Board noted that, if the claim were found to be timely, additional evidence would be needed in order to make a reasoned determination regarding whether appellant's claimed August 22, 2007 injury occurred within the performance of duty. The Board directed OWCP to gather additional information regarding the circumstances of appellant's participation in exercise/recreational duties on August 22, 2007, including the employing establishment's knowledge of and approval of such activities. The Board directed OWCP, after carrying out such development, to issue a decision regarding appellant's claim for a work-related injury on August 22, 2007.⁴

On remand, in accordance with the Board's February 2, 2015 decision, OWCP provided appellant and the employing establishment the opportunity to submit additional information regarding his activities on August 22, 2007. In an August 7, 2015 statement, appellant's immediate supervisor in 2007 reported that she had actual knowledge of appellant's August 22, 2007 heart attack on the date it occurred. She indicated that appellant was not mandated to participate in a physical fitness program while attending the Spanish class at FLETC, but that it was a requirement during the Basic Officer Training class that he had just completed. The supervisor noted that he was encouraged to maintain himself in a physically fit condition and that

² Docket No. 14-0077 (issued February 2, 2015).

³ On August 12, 2013 appellant, then a 52-year-old Customs and Border Protection officer, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2007 at 5:15 p.m. he sustained work-related cardiac arrest at the Foreign Law Enforcement Training Center (FLETC) when he was running on the outdoor track next to the gym. Regarding the cause of the claimed injury, appellant noted, "While I was detailed to the FLETC as student at the Spanish language academy, I was engaged in physical training at the facility's running track when I went into full cardiac arrest." Appellant stopped work on August 22, 2007 and returned to work on October 30, 2007. By decision dated September 26, 2013, OWCP denied his claim because he had not established an injury in the performance of duty on August 22, 2007.

⁴ If it were found that, the claim was timely and the August 22, 2007 running activities occurred in the performance of duty, OWCP was directed to evaluate the medical evidence to determine if a medical condition resulted from work factors. The record contains a number of medical reports from around the time appellant had his heart attack on August 22, 2007, including clinical notes and diagnostic testing results. In an August 22, 2007 report, Dr. Richard N. Boswell, an attending Board-certified cardiologist, indicated that appellant was running in the heat on August 22, 2007 and apparently went down. He noted that appellant was found to be asystolic and was shocked by emergency response workers and brought to the emergency room. On August 24, 2007 Dr. Boswell indicated that it was reported that appellant was jogging when he went into cardiac arrest on August 22, 2007. He diagnosed, "Atherosclerotic coronary artery disease, two vessels, moderately severe. Status post cardiac arrest doing physical conditioning." Dr. Boswell noted that cardiac catheterization was performed. In an August 24, 2007 report, Dr. Mark A. Mostovych, an attending Board-certified cardiologist, related that it was reported that appellant suffered cardiac arrest while jogging.

FLETC had a gym and various recreational activities that it promoted.⁵ She further noted that the employing establishment derived a benefit from appellant being a physically fit officer, that all FLETC students were permitted to use the facilities available for physical fitness, and that his participation in a physical fitness activity on August 22, 2007 did not violate any rule or regulation.

By decision dated August 28, 2015, OWCP denied appellant's claim for work-related injury on August 22, 2007. It found that he had filed a timely traumatic injury claim because the evidence revealed the employing establishment had actual knowledge of the claimed August 22, 2007 injury within 30 days of August 22, 2007. However, appellant's claim for an August 22, 2007 injury was denied "because the evidence is not sufficient to establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors."⁶

Appellant submitted a September 21, 2015 statement in which he noted that the employing establishment's Selectee Physical Fitness Training Guide indicated that Customs and Border Protection officers needed to maintain a high level of physical fitness post-academy and for the duration of their careers. He posited that the employing establishment derived a direct benefit from his fitness training and noted that other employees/students at FLETC were permitted to participate in physical fitness activities. Appellant asserted that he did not violate any rules or regulations and that the employing establishment provided equipment and facilities for physical fitness activities.

In a December 17, 2015 decision, OWCP denied appellant's claim for a work-related injury on August 22, 2007. It modified its August 28, 2015 decision to reflect its determination that he was in the performance of duty at the time of the August 22, 2007 heart attack. OWCP, however, further found that appellant's claim should be denied because he did not submit medical evidence showing he sustained an injury due to the accepted August 22, 2007 work factors, *i.e.*, his running activities on that date.

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 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 and/or specific condition for which compensation is claimed are causally

⁵ The supervisor indicated that FLETC had a gym, track, and various jogging trails for student and staff use.

⁶ OWCP did not provide any further explanation of why appellant's claim for an August 22, 2007 injury was denied on the basis that it did not occur in the performance of duty.

related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁹ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

“(1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death; or

“(2) written notice of injury or death as specified in section 8119 was given within 30 days.”¹⁰

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹¹ The phrase sustained while in the performance of duty 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.¹² To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in his master’s business, at a place when he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.¹³

The Board has recognized that FECA covers an employee 24 hours a day when the employee is on travel status and engaged in activities essential or incidental to such duties.¹⁴ When the employee, however, deviates from the normal incidents of his trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the

⁷ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁹ *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

¹⁰ 5 U.S.C. § 8122(a).

¹¹ *Id.* at § 8102(a).

¹² *G.N.*, Docket No. 12-261 (issued July 23, 2012).

¹³ *Id.*

¹⁴ *S.B.*, Docket No. 10-842 (issued December 9, 2010).

temporary assignment contemplated by the employing establishment, the employee ceases to be under the protection of FECA and any injury occurring during these deviations is not compensable.¹⁵

With regard 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; (2) the employing establishment, 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 employing establishment derives substantial direct 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.”¹⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.¹⁷

ANALYSIS

On August 12, 2013 appellant, a Customs and Border Protection officer, filed a traumatic injury claim alleging that on August 22, 2007 he sustained work-related cardiac arrest at the FLETC when he was running on the outdoor track next to the gym. By decision dated February 2, 2015, the Board remanded the case to OWCP in order to gain further information about the timeliness of the filing of the claim and about the matter of whether his August 22, 2007 activities occurred in the performance of duty. On remand, OWCP further developed these matters. In its December 17, 2015 decision, it found that appellant’s claim was timely filed and that he had established that he was in the performance of duty at the time of the August 22, 2007 heart attack. However, OWCP denied his claim for a work-related injury on August 22, 2007 on the basis that he did not submit medical evidence showing that he sustained an injury due to the August 22, 2007 work factors, *i.e.*, his running activities on that date.

The Board finds that appellant’s claim was properly denied because he has failed to submit medical evidence showing that he sustained a specific medical condition on August 22, 2007 due to the accepted incident.¹⁸ None of the medical documentation submitted discussed the actual cause of his heart attack. It only stated that appellant was running when his heart attack occurred on August 22, 2007. Dr. Boswell in his August 22, 2007 report, noted that appellant was running in the heat on August 22, 2007 and apparently went down. He noted that appellant was found to be asystolic and was shocked by emergency response workers and brought to the

¹⁵ *Id.*

¹⁶ *T.E.*, Docket No. 13-99 (issued May 10, 2013).

¹⁷ *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁸ *See supra* notes 7, 8, and 17.

emergency room. In his August 24, 2007 report, Dr. Boswell noted that appellant was jogging when he went into cardiac arrest on August 22, 2007. He diagnosed, "Atherosclerotic coronary artery disease, two vessels, moderately severe. Status post cardiac arrest doing physical conditioning." Dr. Mostovych, the attending cardiologist, reported that appellant suffered cardiac arrest while jogging. Although both physicians provides a clear diagnosis, neither Dr. Boswell nor Dr. Mostovych provided an opinion of reasonable medical certainty supported by medical rationale finding that appellant's running activities on August 22, 2007 caused or contributed to the heart attack he suffered on that date.

For these reasons, appellant has not established a work-related injury on August 22, 2007 and OWCP properly denied his claim. He 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 work-related injury on August 22, 2007.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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