

Park in Commerce City, CO, at 4:45 p.m. on Sunday, August 2, 2015. He asserted that he suffered a complete left Achilles tendon rupture during a soccer match at the Denver Cup tournament, which he was refereeing as part of his recovery program for “an ongoing occupational disease.” On the same form, a witness indicated that appellant was the center referee for a girls’ soccer match at Dick’s Sporting Goods Park, Field No. Three. He noted that, in the second half of the match, a foul was committed and appellant blew his whistle. While running to the spot of the foul, appellant stepped in a small hole and he immediately fell to the ground because his left leg gave out. Appellant’s immediate supervisor indicated on the form that appellant’s regular work hours were 6:00 a.m. to 4:30 p.m., Tuesday through Friday, and that his claimed injury did not occur in the performance of duty.²

In an accompanying August 2, 2015 statement, appellant provided further details of the left Achilles tendon rupture he suffered while refereeing a soccer match on August 2, 2015. He indicated that he filed a Form CA-2 on July 30, 2015 for several medical conditions he sustained due to his “unhealthy working environment,” including the condition of obesity.³ Appellant noted that his attending physician approved his participation in youth soccer matches as part of his exercise program to combat obesity. He also asserted that his claimed August 2, 2015 employment injury was related to his work because his claimed occupational obesity placed unusual strain on his left Achilles tendon and made injury to the tendon more likely.

By letter dated August 7, 2015, an employing establishment official advised that appellant’s claim for an August 2, 2015 employment injury was being challenged. She indicated that the alleged injury occurred on a Sunday, a nonwork day. The official noted that appellant was acting as a soccer referee in his private capacity on August 2, 2015 and that his activities on that date bore no relationship to his duties as an auditor for the employing establishment.

In an August 13, 2015 letter, OWCP requested that appellant submit additional evidence in support of his claimed August 2, 2015 employment injury. It requested that he complete and submit an attached questionnaire which posed various questions regarding the circumstances of his claimed August 2, 2015 employment injury.

Appellant submitted several medical reports in which his attending physicians discussed their treatment of his left Achilles tendon tear sustained on August 2, 2015. In an August 7, 2015 letter, Dr. Patrick Sharp, an attending osteopath, indicated that he had cleared appellant to participate in youth soccer matches as part of an exercise program designed to address his

² Appellant filed a duplicate Form CA-1 on August 5, 2015 for the same claimed August 2, 2015 employment injury. The August 5, 2015 form contains information which is similar to what was provided on the August 2, 2015 form. On the August 5, 2015 form, appellant’s immediate supervisor indicated that the employing establishment was controverting the claim because the injury occurred on a nonwork day and off the employing establishment premises under circumstances unrelated to appellant’s job. The supervisor indicated that appellant reported that his participation in the soccer match on August 2, 2015 was an informal part of his recovery from a claimed occupational disease for which he filed a Form CA-2 on July 30, 2015.

³ The record does not contain a copy of the referenced Form CA-2.

obesity.⁴ In an August 20, 2015 form report, Dr. Melissa Gorman, an attending Board-certified orthopedic surgeon, noted that with respect to appellant's left Achilles tendon rupture suffered on August 2, 2015 that, "[Appellant] suffered injury during a nonwork activity, but it is a consequential injury of his obesity."⁵

Appellant submitted his responses to an OWCP questionnaire on August 13, 2015. He acknowledged that his claimed August 2, 2015 injury occurred while he was off the employing establishment premises during a nonwork day. Appellant also acknowledged that his refereeing activities on August 2, 2015 were not part of a physical fitness plan required by the employing establishment and that no equipment or facilities were provided by the employing establishment. He felt that the employing establishment benefited from his activities on August 2, 2015 because they were designed to improve his health. Appellant repeated his previous assertion that the injury was sustained in the performance of duty because his soccer refereeing was part of a physician-recommended exercise program designed to combat his claimed employment-related obesity.⁶ He also repeated his argument that his August 2, 2015 Achilles tendon tear was covered under FECA because his claimed employment-related obesity made him more susceptible to such an injury.

In a September 18, 2015 letter, an employing establishment official indicated that the employing establishment did not sponsor or encourage appellant's refereeing activity on August 2, 2015 in any way. The employing establishment did not provide any leadership, equipment, or facilities for the activity. Appellant was not participating in a physical fitness plan or any other activity sponsored by the employing establishment. The employing establishment official indicated that the claimed August 2, 2015 injury occurred off premises while he was off duty and the activity was not related to his work duties as an auditor.

In a November 19, 2015 decision, OWCP denied appellant's claim for an August 2, 2015 injury on a factual basis, finding that he did not meet his burden of proof to establish an injury in the performance of duty on August 2, 2015. It noted that his claimed August 2, 2015 employment injury occurred on a nonwork day and off of the employing establishment premises. Appellant's private refereeing activities were not related to his work as an auditor and the employing establishment did not sponsor these activities in any way.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁷ The phrase "sustained

⁴ In an undated statement received on August 25, 2015, Dr. Sharp indicated that appellant's August 2, 2015 injury was "caused and aggravated at least in a material part by the medical conditions documented on the Form CA-2, including particularly [appellant's] obesity at the time of the injury."

⁵ In an August 19, 2015 statement, appellant asserted that Dr. Gorman's report established his claim for an August 2, 2015 employment injury.

⁶ Appellant acknowledged that the occupational disease claim he filed on July 30, 2015 had not yet been adjudicated.

⁷ *Id.* at § 8102(a).

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.”⁸ “Arising out of the employment” tests the causal connection between the employment and the injury; “arising in the course of employment” relates to the time, place, and work activity involved.⁹ For the purposes of determining entitlement to compensation under FECA, “arising in the course of employment,” *i.e.*, performance of duty, must be established before “arising out of the employment,” *i.e.*, causal relation, can be addressed.¹⁰

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; or

“(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.”¹¹

ANALYSIS

On August 2, 2015 appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained an employment-related injury at Dick’s Sporting Goods Park in Commerce City, CO, at 4:45 p.m. on Sunday, August 2, 2015. He asserted that he suffered a complete left Achilles tendon rupture during a soccer match at the Denver Cup tournament which he was refereeing as part of his recovery program for “an ongoing occupational disease.”

The Board finds no evidence to establish that appellant was in the performance of duty on August 2, 2015 when he sustained his injury. Appellant’s claimed injury did not occur on the premises of the employing establishment during a lunch or recreational period as a regular incident of his employment. The record clearly reveals that his accident occurred off of the premises of the employing establishment while he was not on duty or in pay status. Thus two important physical indicia of course-of-employment, time and place, have not been met in this case.¹²

⁸ See *Bernard D. Blum*, 1 ECAB 1 (1947).

⁹ See *Eugene G. Chin*, 39 ECAB 598, 601-02 (1988); *Clayton Varner*, 37 ECAB 248, 250 (1985).

¹⁰ *Kenneth B. Wright*, 44 ECAB 176, 181 (1992).

¹¹ See *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993); *Id.*; see also A. Larson, *The Law of Workers’ Compensation* § 22.00 (2015).

¹² The Board has recognized the “unusual potency” of time and place in identifying recreational activities that are in the course of employment. See *Archie L. Ransey*, 40 ECAB 1251 (1989).

With respect to an express or implied requirement to participate in the activity, the evidence of record reveals that on August 2, 2015 appellant was participating in the purely private activity of refereeing a youth soccer game. The employing establishment did not sponsor or encourage appellant's refereeing activity on August 2, 2015. It did not provide any leadership, equipment, or facilities for the activity. Appellant was not participating in a physical fitness plan or any other activity sponsored by the employing establishment. The employing establishment did not have any involvement in his recreational activity that would bring the activity within the course of employment.¹³ Accordingly, there is no evidence that the second test has been met.

With respect to the third test, appellant asserted that the employing establishment received a benefit related to employee well-being. No evidence in the record suggests that the activity was related in any notable way to the employing establishment's business or to his work as an auditor. Consequently, there is no evidence that the employing establishment derived substantial direct benefit from the activity beyond that intangible value of improvement in employee health that is common to all kinds of recreational activity.¹⁴

On appeal, appellant asserts that his August 2, 2015 left ankle injury was sustained in the performance of duty because his soccer refereeing was part of a physician-recommended exercise program designed to combat his claimed employment-related obesity.¹⁵ He has not presented sufficient evidence or argument to support FECA coverage for his claimed August 2, 2015 injury under this theory.¹⁶ Appellant also asserted that his August 2, 2015 Achilles tendon tear was covered under FECA because his claimed employment-related obesity made him more susceptible to such an injury. Likewise, he has not presented evidence or argument mandating FECA coverage under this theory.

For these reasons, the Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on August 2, 2015.

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.

¹³ The furnishing of financial support, athletic equipment, prizes are relevant to the issue of employing establishment encouragement, but standing alone this evidence is ordinarily not enough to establish compensability. *See Donald C. Huebler*, 28 ECAB 17 (1976) (where the employing establishment involvement such as printing of game results in the employing establishment newspaper, display of trophies, photographing of players during work hours, and printing of admission tickets was insufficient to establish an activity in the performance of duty).

¹⁴ *See supra* note 11.

¹⁵ Appellant acknowledged that the occupational disease claim he filed on July 30, 2015 for employment-related conditions, including obesity, had not been adjudicated.

¹⁶ Given appellant's failure to support this theory for FECA coverage, he also has not supported the claimed need, made on appeal to the Board, that the file for his occupational disease claim should be combined with the file for the present claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on August 2, 2015.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board