

2017 while doing sit-ups at the University's Reserve Officers' Training Corps (ROTC) physical fitness facility. He explained that during the sit-up portion of his physical training test, his back gave out around the 40-second mark and he was unable to get up from the ground without assistance.

On August 30, 2017 appellant was treated in a hospital emergency department for acute bilateral low back pain with sciatica. He was placed on a five-pound lifting/pushing/pulling restriction and advised to avoid prolonged standing. A September 1, 2017 lumbar spine x-ray was negative and otherwise unremarkable. Appellant subsequently received a diagnosis of lumbar spine fracture without cord injury.

In a September 24, 2018 development letter, OWCP informed appellant that the evidence received was insufficient to support his claim. It advised him to submit medical evidence establishing a diagnosis in connection with the alleged injury. OWCP also advised appellant that it had not received a "line of duty" determination from the Military Science Officer of his ROTC program and explained that it should contain a brief description of how, where, and when the injury occurred, and confirm that the injury occurred as a result of practical military training. It afforded appellant 30 days to submit the requested factual and medical evidence.

In an October 23, 2018 statement, appellant explained how his back gave out during an August 29, 2017 ROTC physical fitness test. He also described his symptoms following the August 29, 2017 incident, and the medical treatment he received which included physical therapy.

In another October 23, 2018 statement, Captain K.B., Assistant Professor of Military Science, indicated that on August 29, 2017 appellant was unable to complete the sit-up portion of the Army Physical Fitness Test (APFT). Appellant expressed concern for an issue he was having with his back. Captain K.B. further indicated that appellant subsequently completed the 2-mile run portion of the APFT. He also noted that appellant sought medical treatment and provided him documentation regarding his physical limitations. Captain K.B. advised that appellant did not participate in physical fitness training until cleared by his physician. To the best of his knowledge, appellant was fully compliant with his physician's treatment regimen.

On October 25, 2018 OWCP received a telephone call from an individual at the ROTC unit who explained that appellant was not a cadet, but was actually a 2nd Lieutenant who was finishing up his degree as part of an ROTC post-commissioning program. Appellant was also not considered a civil employee under FECA.

In an October 25, 2018 statement, Lieutenant Colonel (LTC) S.B., U.S. Army Professor of Military Science, advised that following appellant's receipt of an associate degree from Marion Military Institute, he was commissioned as a U.S. Army 2nd Lieutenant on May 7, 2016 as part of the Early Commissioning Program (ECP). In the fall of 2016, appellant enrolled at the University of Wisconsin-Whitewater and received a Bachelor of Science degree on May 22, 2018. LTC S.B. further explained that on August 29, 2017 appellant, then a 2nd Lieutenant, injured his back while taking the semi-annual APFT in accordance with the terms of his May 7, 2016 ECP memorandum of understanding. As a result of that injury, appellant filed the current claim in September 2018.

OWCP also received appellant's May 7, 2016 oath of office -- military personnel form, which indicated that he was appointed that day as a 2nd Lieutenant (reserve commissioned officer). Additionally, it received his May 6, 2016 2-year agreement (Educational Assistance Program for Military Junior College (MJC) Commissioned Officers) with the U.S. Army regarding further educational assistance to obtain a bachelor's degree, which included the requirement that he "meet and maintain the Army Physical Fitness Test (APFT) standard..." A memorandum of understanding similarly outlined appellant's rights and responsibilities as an ECP Lieutenant, including participation in the semi-annual APFT.

By decision dated November 5, 2018, OWCP denied appellant's traumatic injury claim finding that he was not a civil employee as that term is defined under FECA. It explained that at the time of his alleged injury on August 29, 2017 appellant was not an ROTC cadet, but a commissioned officer (2nd Lieutenant) in the U.S. Army.

LEGAL PRECEDENT

A claimant seeking benefits under FECA² has the burden of proof to establish 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 filed within the applicable time limitation period of FECA,³ that an injury was sustained while 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.⁴ 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.⁵

Under FECA an "employee" means, but is not limited to, "a civil officer or employee" in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the U.S.⁶ The definition also includes an individual rendering personal service to the U.S. similar to the service of a "civil officer or employee" of the U.S., without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual.⁷

² *Id.*

³ *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ 5 U.S.C. § 8101(a)(A); 20 C.F.R. § 10.5(h)(1).

⁷ *Id.* at § 8101(a)(B); *id.* at § 10.5(h)(2).

Although FECA coverage does not specifically extend to active duty or reserve members of the U.S. Armed Forces, it does provide coverage for members of the ROTC.⁸ Section 8140 of FECA extends coverage to a member of, or applicant for membership in, the ROTC of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred in the line of duty: (1) while engaged in fight or flight instruction; or (2) while performing authorized travel to or from, or while attending, training or a practice cruise.⁹

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 or her travel to or from that training.¹⁰ Similarly, a member or applicant for membership who contracts a disease or illness which is the proximate result of the performance of training is considered to have been injured in the line of duty.¹¹ A representative of the ROTC military department concerned shall determine whether or not an injury, disease, or illness was incurred or contracted in the line of duty and was the proximate result of the performance of military training by the member concerned or of his/her travel to or from that military training.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he was an employee as defined under 5 U.S.C. § 8101(1).

Appellant's September 8, 2018 traumatic injury claim alleged that he was injured on August 29, 2017 at the University's "Army ROTC" physical fitness facility. Appellant submitted his traumatic injury claim through the ROTC department, which was signed by D.E., professor of military science. Under the circumstances, OWCP developed appellant's claim as if he were an ROTC cadet, and specifically requested that he obtain a line of duty determination from a representative of the ROTC department.

On October 25, 2018 D.E. contacted OWCP by telephone and advised that appellant was not an ROTC cadet, but actually a commissioned officer who was finishing up his degree when injured. In an October 25, 2018 letter, LTC S.B. explained that at the time of appellant's August 29, 2017 injury, he had already received his commission as a 2nd Lieutenant in the U.S. Army. He further explained that appellant was commissioned on May 7, 2016 prior to his enrollment at the university, and that he had since graduated with a bachelor's of science degree. Additionally, LTC S.B. advised that appellant's participation in the semi-annual APFT was part of his obligation pursuant to his May 7, 2016 commission and the contemporaneous ECP memorandum of understanding. OWCP also received documentation confirming that appellant

⁸ 5 U.S.C. § 8140.

⁹ *Id.* at § 8140(a)(1) and (2).

¹⁰ *Id.* at § 8140(b).

¹¹ *Id.*

¹² *Id.*; see *R.D.*, Docket No. 14-1413 (issued October 28, 2014); see also Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers' Training Corps*, Chapter 4.600.6 (April 2019).

received his commission on May 7, 2016, and was obligated to participate in the APFT while pursuing his bachelor's degree with the financial assistance of the U.S. Army.

The record establishes that appellant was not an ROTC cadet when he allegedly injured his lower back on August 29, 2017. As appellant was a U.S. Army reserve commissioned officer (2nd Lieutenant) at the time of the alleged injury, he has not satisfied the definition of either an ROTC cadet/applicant or "a civil officer or employee" of the U.S. Government.¹³ Accordingly, the Board finds that he is not an employee as defined under FECA.¹⁴

On appeal appellant disputes OWCP's characterization of him as being on "active duty." Whether his status was active duty or reserve is not dispositive on the issue of his "employee" status under FECA. As discussed above, appellant is not considered a civil employee pursuant to 5 U.S.C. § 8101(1).

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 not met his burden of proof to establish that he was an employee as defined under 5 U.S.C. § 8101(1).

¹³ 5 U.S.C. §§ 8101 and 8140; 20 C.F.R. § 10.5(h).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board