United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 19-0805**
	)	**Issued: November 18, 2019**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Cumberland, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2019 appellant, through counsel, filed a timely appeal from a December 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the December 21, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury on February 20, 2018 in the performance of duty, as alleged.

FACTUAL HISTORY

On March 1, 2018 appellant, then a 30-year-old financial specialist/accountant, filed a traumatic injury claim (Form CA-1) alleging that at 12:26 p.m. on February 20, 2018 he sustained a complete tear of the patella and quadriceps in his knee playing basketball with coworkers while in the performance of duty. He explained that as he went up for a lay-up while playing basketball after lunch with his coworkers, Lieutenant S.E. and D.L., on a training center court located on federal property, he felt a pop and extreme pain. Appellant indicated that his knee cap dislocated and was in a different position than normal. He claimed that they began to play basketball after being told to "network" until classes began. Shortly after B.L., his wife and an information technology specialist, joined them, they all started to discuss the next steps in their careers. Appellant stopped work on the date of injury. The employing establishment did not controvert the claim.

In a memorandum dated March 8, 2018, appellant noted that on February 20, 2018 he was assigned to a week of Annual Refresher Training (ART) for recertification. He indicated that the training took place at a training center located on federal property. Appellant related that an agenda for the training provided that employees were to eat lunch and then "network." He noted that networking was defined in employing establishment terms as socializing with fellow coworkers that were usually of a higher pay grade and had more bureau experience. Appellant networked with Lieutenant S.E., a former lieutenant at U.S. Penitentiary Hazelton, because he had more experience and was a GS-11. He saw him grab a basketball and head to the training center basketball court at Federal Correctional Institution (FCI), in Cumberland, Maryland. Appellant asked the lieutenant about the next steps he planned to take for possibly applying for a captain position. He also asked him about the next step he should take in his own career. After about three minutes into shooting around, four or five more staff members joined appellant and Lieutenant S.E. Appellant again noted that as he attempted to lay-up a basketball he immediately felt and heard a loud pop sensation in his left knee. He fell to the ground and was surrounded by roughly 20 staff members. Appellant claimed that "it was blatantly obvious that my knee cap was completely off my knee." He was immediately driven to a hospital by B.L. Appellant was informed that he had torn his left patella and quadriceps and needed surgery as soon as possible, which was performed on February 21, 2018 by Dr. Matthew M. Thompson, an orthopedic surgeon. Following surgery, he had to wear a brace on his knee for six weeks and undergo therapy for three weeks, and was expected to fully recover after five months. Appellant indicated that he had no left knee injury prior to his claimed injury. He contended that he followed the agenda perfectly and that his injury happened while following direct written orders. Appellant further contended that his injury occurred "on work property" during work training and the hours of training. He indicated that there were witnesses to his injury.

Appellant submitted a copy of the FCI, Cumberland ART agenda for January 16 through February 22, 2018. It indicated that "Lunch/Networking" was scheduled for 11:30 a.m. to 12:15 p.m. Following lunch, the agenda indicated that a Sexually Abusive Behavior Prevention and

Intervention Program was scheduled from 12:15 p.m. to 12:45 p.m. Medical evidence and the employing establishment's offer of a limited, light-duty work assignment were also submitted.

In a development letter dated April 5, 2018, OWCP advised appellant that initially his injury appeared to be minor, resulting in minimal or no lost time from work and the employing establishment had not controverted continuation of pay or challenged the merits of the claim. It determined that the factual portion of appellant's traumatic injury claim had not been established. OWCP requested that he complete a questionnaire as well as provide additional factual and medical evidence in support of his claim. It afforded appellant 30 days to respond.

In a separate development letter dated April 5, 2018, OWCP requested that the employing establishment provide information regarding the circumstances of the claimed February 20, 2018 injury. It noted that it had reviewed the ART schedule and requested the employing establishment to comment on why appellant was still playing basketball when he was scheduled to attend a different training session at that same time.

OWCP thereafter received additional medical evidence.

In a letter dated April 13, 2018, S.F., a human resource manager, responded to OWCP's development letter. She noted that appellant injured his knee while playing basketball "on institutional grounds." Appellant was also receiving classroom training on February 20, 2018. S.F. maintained that appellant voluntarily engaged in the basketball activity. She noted that no employees, including appellant, were required to play basketball and that no basketball was provided for the training. S.F. further maintained that the employing establishment derived no benefit from appellant playing basketball. She also maintained that no other employees were required, persuaded, or permitted to play basketball. S.F. related that all employees should have been receiving or waiting to receive instruction in a classroom at 12:26 p.m. Appellant was playing basketball when he should have been in class, which violated an unwritten rule that all training participants were expected to be in a classroom at the end of the lunch period. The rule was reinforced to the extent possible by an instructor or employee in the human resources department. S.F. indicated that appellant's injury occurred on employing establishment premises during his regular work hours. The employing establishment did not provide leadership for the basketball activity. S.F. related that a basketball was not provided, but it was unknown if the basketball was personal property or government owned. The basketball hoop and court were permanent structures outside of the training center and were provided for wellness or leisure activities. S.F. maintained that she was not aware why appellant remained on the basketball court when he was scheduled to be inside a classroom. She concluded that the basketball activity was not a part of the training session.

Appellant, in an undated statement, also responded to OWCP's development letter. He noted the medical treatment he received for a prior right knee injury and his claimed left knee injury. Appellant indicated that his February 20, 2018 work-related injury had nothing to do with a previous left knee injury. He further indicated that, after his 30-minute lunch break, it was 11:30 a.m. although the agenda stated that lunch and networking were scheduled from 11:30 a.m. to 12:15 p.m., his class had been dismissed early. Appellant explained that networking was not used to build comradery rather, it provided an opportunity for employees with little time in the bureau to pick the brains of supervisory staff. He noticed Lieutenant S.E. grab a basketball supplied by the bureau and walk to a court that was on the same property as the training. Appellant claimed

that, if he had not networked, then he would have been in direct violation of the agenda. He related that Lieutenant S.E. was a supervisor with plenty of experience and he, B.L, and D.L. followed Lieutenant S.E. to ask him questions. Appellant noted that Lieutenant S.E. was in the middle of explaining how to become a captain when his injury occurred. He also noted that, prior to training, there were no explicit directions on what could and could not have been done during networking. Appellant asserted that his participation in networking was based solely on the agenda. He described the benefits of networking which resulted in his career advancement. Appellant maintained that the employing establishment also benefited from networking as it would not have been standard on every ART training agenda or be allowed to take place in at least a one-half hour block. He contended that the agenda required everyone to network. Appellant asserted that, if the human resources department had provided more direction on how to network and written instructions to avoid the basketball court, he would have networked somewhere else. He further asserted that he did not violate any employing establishment rules or regulations in networking by standing on the basketball court and throwing a basketball into the hoop. Appellant noted that he was not punished or reprimanded for his action. There was no policy or anyone enforcing employees to avoid the basketball court. Appellant indicated, however, that the human resources department shunned him and created an agenda for next year that he called the "[T.L.]" rule, which instructed "lunch, then sit in your chair." He related that an instructor was late for class and that he could support his contention with witness statements. Appellant indicated that he returned to limited-duty work on March 14, 2018.

Appellant submitted witness statements attesting to the circumstances surrounding the February 20, 2018 incident. In a memorandum dated March 15, 2018, D.L. related that during ART on February 20, 2018, appellant suffered a catastrophic left knee injury as he attempted a lay-up. Approximately 30 minutes after their lunch break, they were told to network until the next class started. D.L. indicated that, while waiting, he, appellant, and Lieutenant S.E. decided to shoot baskets on the basketball courts. Appellant attempted the lay-up during their networking session. Following his injury he was taken to a hospital by B.L.

B.L., in a March 15, 2018 memorandum, related that she witnessed her husband sustain a left knee injury on February 20, 2018 as he went to make a lay-up on a basketball court with Lieutenant S.E. and D.L. She indicated that approximately 25 minutes after the scheduled lunch break was over, employees were told to network until the next class began. B.L. indicated that appellant's injury occurred during this "networking" time. She took him to a hospital emergency room where he was diagnosed as having a complete quadriceps and patellar tear.

Additional medical evidence was submitted.

By decision dated May 16, 2018, OWCP denied appellant's claim, finding that he was not in the performance of duty when injured on February 20, 2018. It found that he was not required to participate in the activity and the employing establishment did not derive a substantial benefit from his participation in the activity.

On May 22, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Additional evidence was submitted, including memoranda dated June 4, 2018 from D.L., B.L., and Lieutenant S.E. D.L. and B.L. continued to indicate that they witnessed appellant's

injury on February 20, 2018. D.L. noted that he had attended several ART sessions and what was or was not permitted during "networking time" had not been articulated with the exception of not being allowed to leave the institutional grounds. B.L. contended that all parties involved in the basketball game were in performance of their official duties under the scope of "networking." As previous employee at Federal Correctional Complex Hazelton, she assured that this type of "networking" was routine and flexible with no guidelines as to what was or was not allowed during that time. B.L. maintained that the only exception was that staff could not leave institutional grounds during the performance of these official duties. Lieutenant S.E. related that at approximately 12:10 p.m. on February 20, 2018 he grabbed a basketball from the training center weight room and went to the institutional basketball court and began to shoot around. He was on "Lunch/Networking" time for ART. Lieutenant S.E. had already eaten his lunch. The next class was scheduled to start at 12:15 p.m., but he did not see the instructor. While Lieutenant S.E. was shooting around appellant, B.L., and D.L. joined him in shooting around. During this time, appellant asked him questions about obtaining a promotion and transferring to other employing establishment locations. Lieutenant S.E. described appellant's claimed injury and noted that he was taken to a hospital by B.L.

Appellant, in statements dated May 22 and June 1, 2018, responded to S.F.'s statement. He noted that no one was in a classroom at the time of his injury. Appellant further noted that there was nothing in writing which indicated that employees were not permitted on the basketball court. He indicated that the basketball was available in the training center for staff usage. Appellant noted that an e-mail from a coworker indicated that basketballs were kept at the training center for years.

In a statement dated May 31, 2018, R.B., appellant's coworker, indicated that each year since his employment at the employing establishment in July 2012, he attended ART. During the week-long training it was common practice to "network" with individuals. The staff networked with each other anytime and anywhere when instructors were not teaching.

During the telephonic hearing, held on October 15, 2018, counsel contended that appellant was required to network with his supervisor. Appellant testified that Lieutenant S.E. was his previous supervisor and that he was one of the supervisors at the ART. He further testified that Lieutenant S.E. was a team leader of a team that he had volunteered to be on. Appellant reiterated his history of injury on February 20, 2018 and medical treatment he received. He indicated that he no longer worked at the employing establishment.

Following the hearing, the employing establishment asserted, in a November 5, 2018 memorandum, that it did not specifically define networking. Its approach to networking was parallel to the widely accepted practice in business settings. The employing establishment provided networking opportunities to foster working relationships amongst staff at all levels in all departments. Training participants were given no instruction regarding the networking opportunity as it had been a generally accepted practice to allow networking time in conjunction with the approved 30-minute lunch break. Training participants were afforded an opportunity to leave the premises for lunch and networking from 11:30 a.m. to 12:15 p.m. The employing establishment maintained that appellant was required to be in a class receiving instruction or awaiting instruction at the time of his injury. There was no rule that he was required to be near or around his supervisor during the networking opportunity. The break was not for physical activity, which included playing basketball. Playing basketball during ART was not a mandatory portion

of the training. It was a voluntary activity. J.S and not Lieutenant S.E. was appellant's direct supervisor, based on appellant's hearing testimony that it had probably been a year since Lieutenant S.E. was his supervisor. Further, appellant was not on Lieutenant S.E.'s disturbance control team (DCT). He resigned from DCT on July 17, 2017.

In a statement dated November 23, 2018, appellant responded to the employing establishment's November 5, 2018 statement. He acknowledged that the employing establishment had no definition of networking. There were only on-site rules such as, not leaving the institutional grounds and to find someone that was a supervisor in any department, which provided an opportunity to discuss a promotion. Appellant asserted that networking was a part of every ART and it was ludicrous to state that it was in conjunction with a lunch break as there would not be an additional spot for it on the agenda and no requirement that employees have to be back on the premises to participate in it. He again contended that the employing establishment failed to provide written documentation of its rules about activities during ART. Appellant also reiterated that networking was mandatory as evidenced by the agenda. He related that employees were told they could leave the grounds for lunch, but had to return to network.

By decision dated December 21, 2018, an OWCP hearing representative affirmed the May 16, 2018 decision.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[4] The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[5] The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[6] This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.[7]

With regard to recreational or social activities, the Board has held such activities arise in the course of employment when: (1) they occur on the premises during a lunch or recreational

[4] 5 U.S.C. § 8102(a).

[5] *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[6] *See A.S.*, Docket No. 18-1381 (issued April 8, 2019); *D.L.*, 58 ECAB 667 (2007); *Mary Keszler*, 38 ECAB 735, 739 (1987).

[7] *M.T.*, Docket No. 16-0927 (issued February 13, 2017); *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005); *Eugene G. Chin*, 39 ECAB 598 (1988).

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 is common to all kinds of recreation and social life.[8]

ANALYSIS

The Board finds that appellant was in the performance of duty on February 20, 2018.

There is no dispute that at 12:26 p.m. on February 20, 2018 appellant was injured on the employing establishment premises, satisfying the first criterion noted above. Appellant claimed that at the time of the injury, he was networking with Lieutenant S.E as they played basketball with one another and other attendees at a training course. OWCP denied the claim because appellant's injury was not sustained while in the performance of duty. The Board finds, however, that appellant has established that he was in the performance of duty when injured on February 20, 2018.

The second criterion, whether the employing establishment required appellant to play basketball as a networking activity or otherwise made the activity part of his services as an employee, is also satisfied. The record indicates that appellant's attendance at the training course was required by the employing establishment. The employing establishment also encouraged participation in networking during the training. Its ART agenda specifically scheduled "Lunch/Networking" from 11:30 a.m. to 12:15 p.m. Appellant noted that while the lunch and networking session was scheduled from 11:30 a.m. to 12:15 p.m., his lunch break ended at 11:30 a.m. because his class had been dismissed early. He contended that he networked with Lieutenant S.E., his experienced former supervisor and team leader, and one of the supervisors at the ART, by playing basketball with him to obtain the lieutenant's advice regarding his continued career advancement at the employing establishment. Appellant explained that the instructor for his next scheduled class was late arriving and in the meantime the lieutenant grabbed a basketball and headed to the training center basketball court where they played basketball. He maintained that networking was a part of every ART and that the employing establishment did not define networking or provide any rules regarding permitted activities during ART.

The March 15 and June 4, 2018 witness statements from Lieutenant S.E., D.L., and B.L., and May 31, 2018, witness statement from R.B. support appellant's contention that the employing establishment encouraged networking during ART. Lieutenant S.E. acknowledged that he was shooting around with appellant, B.L., and D.L. on "Lunch/Networking" time although a class was scheduled to begin at 12:15 p.m. He explained that the class instructor was not present at that time as the instructor was late returning from lunch. Lieutenant S.E. further acknowledged that during the networking session, appellant asked him about securing a promotion and transferring to other employing establishment locations. Further, D.L. and B.L. related that, approximately 25 to 30 minutes after their lunch break, employees were told to network until their next class started. They further related that networking was routine during ART sessions and no guidelines had ever been

[8] *See Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993); *see also* A. Larson, *The Law of Workers' Compensation* § 22.00 (2015).

provided by the employing establishment, with the exception of not being allowed to leave institutional grounds during training, regarding what was or was not allowed during "networking time." R.B. also maintained that every year since he began working at the employing establishment in July 2012, he had attended ART. He noted that during the week-long training it was common practice to "network" with the staff and other employees anytime and anywhere when instructors were not teaching.

Lieutenant S.E., D.L., and B.L. moreover supported appellant's contention that his injury occurred while networking with Lieutenant S.E. as they related that he injured his left knee when he attempted to lay-up a basketball during their networking session. The employing establishment contended that appellant's participation in the basketball activity was voluntary and that he was scheduled to be inside a classroom at the time of injury. However, based on the statements of appellant, Lieutenant S.E., D.L., B.L., and R.B., the Board finds that playing basketball was a networking activity covered under the second criterion for recreational and social activities.

Additionally, the Board finds that appellant has satisfied the third criterion that the employing establishment derived a substantial direct benefit from his participation in the February 20, 2018 basketball networking activity. As discussed above, the employing establishment placed the networking activity on the ART agenda. Further, by doing so, it provided employees the opportunity to discuss their career advancement, which would promote employee retention and increased productivity. Appellant described the benefits of networking which resulted in his prior career advancement at the employing establishment. Moreover, the statements of D.L., B.L., and R.B. also support that the employing establishment derived a benefit by having a networking session during ART as they noted that the session was offered on a yearly basis. For these reasons, the Board finds that the employing establishment derived a substantial direct benefit from appellant's participation in the February 20, 2018 basketball networking activity.

The Board finds that appellant has established that he was in the performance of duty on February 20, 2018, as alleged.[9] Consequently, the issue is whether the incident at work caused an injury. OWCP did not adjudicate this aspect of the case as it found that the injury did not occur in the performance of duty. The case will, therefore, be remanded to OWCP to consider whether the medical evidence establishes that appellant sustained an injury causally related to the February 20, 2018 employment incident. Following such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that he was in the performance of duty on February 20, 2018, as alleged. The Board further finds, however, that the

[9] *Ames W. Hockaday*, Docket No. 01-0152 (issued March 25, 2002).

case is not in posture for decision regarding whether appellant's injury resulted from the accepted February 20, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2018 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further action consistent with this decision of the Board.

Issued: November 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board