

**United States Department of Labor
Employees' Compensation Appeals Board**

S.B., Appellant)	
)	
and)	Docket No. 20-0016
)	Issued: July 12, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, FEDERAL AIR)	
MARSHAL SERVICE HOUSTON FIELD)	
OFFICE, Houston, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 2, 2019 appellant filed a timely appeal from a May 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 24, 2019 appellant, then a 52-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury to his right knee causally related to factors of his federal employment, including participating in the quarterly mandatory Health and Fitness Assessment on April 24, 2019. He indicated that he first became aware of his right knee condition on January 11, 2019, when he sustained an earlier documented right knee injury² and attributed it to factors of his federal employment on April 24, 2019. Appellant did not stop work.

In an April 25, 2019 development letter, OWCP informed appellant that additional evidence was required to establish his claim. It advised him of the type of factual and medical evidence necessary and attached a questionnaire for his completion. OWCP asked that appellant clarify whether he was claiming an occupational disease or a traumatic injury. It afforded him 30 days to submit the requested evidence.

In a separate development letter to the employing establishment of the same date, OWCP indicated that it required additional information to determine whether appellant was eligible for compensation benefits. It listed the information needed with respect to the January 11, 2019 employment incident and the April 24, 2019 activity. OWCP afforded the employing establishment 30 days to submit the requested evidence.

In response, OWCP received a May 2, 2019 employing establishment investigation report. The report indicated that on April 24, 2019 appellant participated in the semi-annual Health Fitness Assessment on an elliptical training machine and strained his right knee. A copy of practical exercise performance requirements for law enforcement/federal air marshal service was also submitted.

In a May 3, 2019 attending physician's report (Form CA-20), Kaylee Nemeth, a physician assistant, indicated that appellant sustained a twisting injury to his right knee on April 24, 2019 while walking down a wheelchair ramp. A magnetic resonance imaging (MRI) scan was ordered.

A May 5, 2019 MRI scan of appellant's right knee indicated a complex medial meniscus tear.

In a May 8, 2019 Form CA-20 report, Ms. Nemeth reported an April 24, 2019 twisting injury to appellant's right knee while walking down a wheelchair ramp. She diagnosed a medial meniscal tear, right knee. Ms. Nemeth released appellant to full-duty work status effective May 8, 2019. A copy of Ms. Nemeth's May 8, 2019 duty status report (Form CA-17) was also provided, which noted an April 24, 2019 date of injury.

By decision dated May 29, 2019, OWCP denied appellant's occupational disease claim. It found that appellant had not met his burden of proof to establish that an injury occurred due to the alleged factors of his federal employment. OWCP noted that appellant had not completed and

² The record reflects that under OWCP File No. xxxxxx131, appellant filed a traumatic injury claim (Form CA-1) alleging a January 11, 2019 right knee twisting injury when he slipped on a wet, sloped walkway. OWCP denied this claim on April 18, 2019.

returned its factual questionnaire. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

On his claim form, appellant asserted that he injured his right knee due to factors of his federal employment, including participating in a mandatory Health Fitness Assessment on April 24, 2019. However, appellant did not provide further information regarding the claimed factors of employment. OWCP requested that appellant clarify his claim and complete a factual questionnaire, however, appellant did not respond to the request for clarification of the alleged injury. To establish a claim for compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of employment believed to have caused his condition.⁷ Appellant did not respond to OWCP's April 25, 2019 development letter, requesting

³ *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 *See A.S.*, Docket No. 19-1766 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

that he provide detailed information concerning the employment factors he believed contributed to his claimed conditions and its accompanying questionnaire.⁸

OWCP received a May 2, 2019 employing establishment investigation report which indicated that on April 24, 2019 appellant had strained his right knee while on the elliptical machine and that first aid was administered. However, as previously noted, appellant has not alleged or clarified that his alleged knee injury occurred due to his training activities on an elliptical machine or due to any other identified federal employment factors.

Given appellant's lack of response to OWCP's development letter, the Board finds that he has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that an injury occurred in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁸ *L.T.*, Docket No. 19-1902 (issued April 8, 2020); *A.H.*, Docket No. 19-0566 (issued August 22, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).