

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

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**J.F., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS BENEFITS ADMINISTRATION,  
Portland, OR, Employer**

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**Docket No. 21-0368  
Issued: April 17, 2023**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On January 13, 2021 appellant, through counsel, filed a timely appeal from a December 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an injury on February 25, 2020 in the performance of duty.

## FACTUAL HISTORY

On March 3, 2020 appellant, then a 56-year-old authorization quality review specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2020 at 11:30 a.m., while teleworking from his residence, as he stood, the watch he was wearing got caught under the armrest of his chair. He jerked his left arm until the watch was freed, causing him to fall and suffer a left biceps complete rupture and chronic left shoulder pain. On the reverse side of the Form CA-1, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on February 25, 2020.

In a February 25, 2020 hospital note, Denalee E. Valler, a certified physician assistant, noted that appellant was seen for an arm injury and diagnosed left biceps tendon rupture, left elbow olecranon bursitis, and chronic left shoulder pain.

On February 29, 2020 appellant was seen by Dr. Christopher Stefan Ritchie, a physician specializing in family medicine, who noted appellant's medical history, detailed examination findings, and diagnosed biceps tendon tear.

In a development letter dated March 30, 2020, OWCP requested additional information from the employing establishment, including information regarding the work appellant was performing at the time of injury, arrangements for working at home, and an opinion on whether appellant was performing official duties at the time of injury.

In a separate development letter dated April 2, 2020, OWCP advised appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a March 16, 2020 patient medical history form from a medical provider, which noted an on-the-job injury date of February 25, 2020 and that appellant was seen for left shoulder, bicep, and elbow injuries. The form was not signed by a physician.

On April 27, 2020 the employing establishment responded to OWCP's request for additional evidence and submitted a copy of appellant's telework agreement. It noted that, at the time of injury, appellant was at his desk when he stood up after completing review of a veteran's application for benefits. The employing establishment acknowledged that he was on duty and performing official work at the time of the injury.

On April 28, 2020 OWCP received progress notes dated December 14 and 16, 2019 from D. Scott Belli, a physician assistant, diagnosing left olecranon bursitis.

By decision dated May 5, 2020, OWCP denied appellant's claim, finding that the incident occurred as alleged, but that the medical evidence was insufficient to establish a diagnosed medical condition in connection with the accepted February 25, 2020 work incident.

In a report dated May 20, 2020 and signed on June 1, 2020, Dr. Brian Puskas, a Board-certified orthopedic surgeon, noted that appellant was seen that day for complaints of persistent left shoulder pain. Appellant related that, in September 2019, he underwent a nonwork-related left shoulder arthroscopic rotator cuff tear and biceps tenodesis surgery and reported persistent pain following a fall in February 2020. A review of his May 20, 2020 shoulder x-ray showed decreased acromiohumeral distance consistent with a chronic rotator cuff tear, postsurgical changes, and wide space where distal clavicle was located from prior Mumford procedure, and no signs of glenohumeral joint osteoarthritis or narrowing. A left elbow x-ray interpretation of even date showed no instability, fracture, or osteoarthritis. Physical examination findings were detailed including left upper extremity supraspinatus and subscapularis positive empty test, tenderness over lateral epicondyle, and poor active motion above his head. Dr. Puskas diagnosed left shoulder pain, left shoulder complete rotator tear or rupture, not specified as trauma, and elbow lateral epicondylitis.

In a form report of even date, Dr. Puskas indicated by check mark that appellant had injured the same body part in September 2019. He described the new injury as occurring when appellant's watch got caught on the arm of his chair while he was getting up from the chair, he heard a pop and felt elbow and shoulder pain.

On October 8, 2020 appellant, through counsel, requested reconsideration and submitted a July 27, 2020 report from Dr. Bradford Lorber, a Board-certified physiatrist.

In a report dated July 27, 2020, Dr. Lorber noted appellant's history of injury on February 25, 2020. He also noted appellant's prior medical history, which included left shoulder surgical procedure on September 27, 2019, which consisted of left suprascapularis repair, glenoid labrum debridement, and left biceps tenodesis. Dr. Lorber related that appellant's prior injury had occurred during a mountain biking incident. Physical examination and range of motion findings were noted. Due to appellant's inability to elevate his arm, Dr. Lorber could not perform maneuvers. He diagnosed left shoulder rotator cuff tear, preexisting left shoulder subscapularis repair, glenoid labrum debridement, and left biceps tenodesis, and preexisting left shoulder clavicle surgery in 1991 and 1993. Dr. Lorber advised that he could not offer an opinion on causation as he would have to review appellant's initial medical records before offering an opinion. He also explained that the mechanism of injury as described by appellant could have caused a rotator cuff tear especially given his recent second surgery in September 2019. In an addendum report, Dr. Lorber noted that he had reviewed the medical record and concluded that the diagnosis of acute biceps tendon rupture was likely a preexisting finding and that the rotator cuff tear was the main pathology.

By decision dated December 22, 2020, OWCP modified the May 5, 2020 decision to find that the medical evidence of record was sufficient to establish a diagnosed medical condition in connection with the accepted employment incident. However, the claim remained denied as the evidence of record was insufficient to establish that appellant was in the performance of duty at the time of the February 25, 2020 incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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, 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

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.”<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

## ANALYSIS

The Board finds that appellant has met his burden of proof to establish an injury occurred on February 25, 2020, while in the performance of duty.

OWCP’s procedures provide that, ordinarily, the protections of FECA do not extend to the employee’s home; however, there is an exception when the injury is sustained while the employee

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<sup>3</sup> *Id.*

<sup>4</sup> *N.B.*, Docket No. 20-1446 (issued March 19, 2021); *A.S.*, Docket No. 18-1381 (issued April 8, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> *See N.B., id.; A.S., id.; Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Supra* note 2 at § 8102(a).

<sup>7</sup> *N.B., supra* note 4; *A.S., supra* note 4; *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

<sup>8</sup> *N.B., id.; A.S., id.; D.L.*, 58 ECAB 667 (2007); *Mary Keszler*, 38 ECAB 735 (1987).

<sup>9</sup> *N.B., id.; A.S., id.; M.T.*, Docket No. 16-0927 (issued February 13, 2017); *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005); *Eugene G. Chin*, 39 ECAB 598 (1988).

is performing official duties. In situations of this sort, it is critical to ascertain whether at the time of injury the employee was in fact doing something for the benefit of the employer.<sup>10</sup>

It is undisputed that on February 25, 2020 appellant jerked his left shoulder/arm to free his watch, which had gotten caught under the left armrest of his chair as he stood while teleworking. He was, therefore, at a time when he was reasonably said to be engaged in the master's business; at a place where he was reasonably be expected to be in connection with the employment; and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.<sup>11</sup> Furthermore, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The Board thus finds that appellant was injured while in the performance of duty.<sup>12</sup>

The Board will, therefore, remand the case for consideration of the medical evidence on the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted February 25, 2020 employment incident.

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on February 25, 2020, as alleged.

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *see also P.B.*, Docket No. 21-0667 (issued March 3, 2022); *M.T.*, Docket No. 16-0927 (issued February 13, 2017); *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

<sup>11</sup> *P.B.*, *id.*

<sup>12</sup> *See D.E.*, Docket No. 21-0988 (issued June 2, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 17, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board