

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

M.A., Appellant)	
)	
and)	Docket No. 23-0694
)	Issued: October 11, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS AND BORDER PROTECTION,)	
Detroit, MI, 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 April 18, 2023 appellant filed a timely appeal from an April 5, 2023 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 5, 2023 decision, appellant submitted additional evidence to OWCP. 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 in the performance of duty, as alleged.

FACTUAL HISTORY

On December 1, 2022 appellant, then a 40-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral exertional compartment syndrome with bilateral leg pain due to factors of his federal employment, specifically training for the Customs and Border Patrol Officer Basic Training 2234 (CBP OBT 2234). He noted that he first became aware of his condition on July 25, 2022, and first realized its relation to his federal employment on August 4, 2022.

In a narrative dated December 1, 2022, Dr. Katherine Rashid, an osteopath specializing in orthopedic surgery, noted appellant's complaints of right and left lower leg pain. On physical examination, she observed mild swelling in the distal anterior lateral aspect of the right lower leg and mild tenderness to palpation over the anterolateral lower leg on the left. Dr. Rashid advised that appellant could return to light-duty work.

In an examination report dated June 20, 2022, Dr. John Goodner, a podiatrist, noted examination findings of mild edema present to the bilateral lower extremity and mild pain to the bilateral anterior lateral compartment. He diagnosed nontraumatic exertional compartment syndrome and anterior shin splints.

In a development letter dated December 16, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding his occupational disease claim. It afforded both parties 30 days to respond.

In a December 29, 2022 disability note, Dr. Rashid indicated diagnoses of pain in left lower leg and exertional compartment syndrome of both lower extremities. She authorized appellant to return to work with restrictions.

In a December 30, 2022 duty status report (Form CA-17), Dr. Rashid noted clinical findings of suspected bilateral exertional compartment syndrome. She recommended that appellant return to limited duty.

In an office clinic note dated January 12, 2023, Dr. Brandon Kakos, a Board-certified internist, recounted appellant's complaints of bilateral lower leg pain. He noted that symptoms began when appellant was training to be a border patrol agent in April 2022. Dr. Kakos indicated that appellant was unable to tolerate the daily training due to bilateral shin pain and was unable to graduate because he could not pass the running requirement. On physical examination, he observed no tenderness to palpation over the anterior tibia, tibialis anterior, and peroneous longus muscles. Dr. Kakos diagnosed nontraumatic compartment syndrome of unspecified lower

extremity, cramp and spasm, and lower leg strain. He noted that appellant was working limited duty.

In office clinic notes dated February 7 through March 13, 2023, Dr. Kakos indicated that appellant was evaluated for follow up of bilateral calf pain. Appellant noted that he tried to increase his running activity but has found it to be difficult. Dr. Kakos provided examination findings and diagnosed strain of lower leg muscle, nontraumatic compartment syndrome of the unspecified lower extremity, cramp and spasm, and right leg pain.

By decision dated April 5, 2023, OWCP denied appellant's occupational disease claim, finding that he had not established the implicated factors of his federal employment. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

³ *Supra* note 1.

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

ANALYSIS

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

In his Form CA-2, appellant alleged that he developed bilateral exertional compartment syndrome with bilateral leg pain due to factors of his federal employment. He specifically reported training for the CBP OBT2234. OWCP, in its December 16, 2022 development letter, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant, however, did not respond to OWCP's development letter or otherwise provide a detailed narrative statement describing the employment factors, which he believed contributed to his condition.⁸ As noted, he bears the burden of submitting a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of a disease or condition.⁹

As the evidence of record is insufficient to establish the alleged employment factors, the Board finds that appellant has not met his burden of proof.

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 an injury in the performance of duty, as alleged.

⁸ *T.G.*, Docket No. 22-0093 (issued February 7, 2023); *J.H.*, Docket No. 22-0062 (issued April 21, 2022).

⁹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2023
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