United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
	)	**Docket No. 25-0208**
and	)	**Issued: February 20, 2025**
	)	
DEPARTMENT OF THE NAVY, MARINE RECRUIT DEPOT, San Diego, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2024 appellant filed a timely appeal from a December 6, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a traumatic injury in the performance of duty on September 13, 2024, as alleged.

FACTUAL HISTORY

On September 18, 2024 appellant, then a 47-year-old welder, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2024, at 10:52 a.m., he sustained a right hip fracture and contusions while in the performance of duty. He reported riding his bicycle when his front tire became caught in a rut located near train tracks, causing him to fall off the bicycle, landing on his right hip. On the reverse side of the claim form, the employing establishment contended that

[1] 5 U.S.C. § 8101 *et seq.*

appellant was not injured in the performance of duty as he was riding his bicycle at lunch time when the incident occurred. The employing establishment listed appellant's regular work hours as 6:30 a.m. to 4:00 p.m., Monday through Friday. Appellant stopped work on September 16, 2024.

On September 14, 2024 Dr. Kimberly Spahn, a Board-certified orthopedic surgeon, treated appellant for a right hip injury. She reported that he had a bike accident the day before and injured his right hip. Dr. Spahn diagnosed closed fracture of unspecified part of the neck of the right femur, initial encounter. She noted that appellant underwent an open reduction internal fixation of the right hip on September 15, 2014.

In a development letter dated September 23, 2024, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish the claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In a work status report dated September 26, 2024, Dr. Spahn noted restrictions of no running, marching, jumping, or pivotal sports; no squatting or kneeling; no use of the bilateral lower extremities and no stair/ladder climbing until October 24, 2024. In a work status report dated October 1, 2024, she noted a restriction of no use of the right lower extremity and indicated that appellant would be non-weight bearing until October 24, 2024.

In an attending physician's report (Form CA-20) dated October 2, 2024, Dr. Mark Katsma, a Board-certified orthopedic surgeon, noted that appellant was in a bicycle accident and injured his right hip. He diagnosed right femur fracture, requiring surgery, and noted appellant was capable of working with restrictions commencing September 14, 2024. Dr. Katsma noted appellant was toe-touch weight-bearing status post right femoral neck surgical pinning and could return to gradual full weight-bearing status on October 24, 2024 with no lifting or squatting.

In a follow-up letter dated October 23, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from its September 23, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

On October 29, 2024 F.F., an employing establishment representative, challenged appellant's claim, noting that both the employee and supervisor initially stated that the injury occurred during the employee's lunch break, but later clarified that the injury occurred during a fitness program session. She advised that appellant was not properly approved to participate in the fitness program during work hours. F.F. indicated that his documentation to do so was expired and he was not in compliance with the employing establishment's fitness program. She also noted that appellant's fitness program records did not reflect participation in the fitness program on the date of injury, September 13, 2024. The employing establishment submitted a fitness program directive dated February 3, 2021, which included a voluntary waiver for participation and consent form, a fitness program record, and a fitness education assessment. Also submitted was a text message from appellant, noting that his injury occurred at work around lunchtime when he was riding his bike along old train tracks and his front tire caught the side of the track causing him to fall on his side.

OWCP received e-mail correspondence between appellant and F.F., on September 30, 2024. In a "Statement of Factual Evidence" appellant indicated that on September 13, 2024 at 10:50 a.m. he sustained a fracture of the right hip when he fell from his bicycle while riding on the employing establishments premises. He noted that the accident occurred on the asphalt behind the building that contains old railroad tracks embedded in asphalt, which have deep ruts adjacent to them. Appellant described riding his bike when his front tire became lodged in one of the ruts causing him to lose control and fall directly onto his right hip. He asserted that the employing establishment permitted employees to engage in a civilian exercise program during work hours, prior to lunch breaks, for one hour a day, up to a maximum of three hours per week. Appellant advised that, at the time of the accident, he was engaged in the permitted exercise program. In a subsequent e-mail dated October 1, 2024, he explained that it was difficult for him to exercise on specific dates because he assists with emergencies that arise in other shops, which take precedence. Appellant indicated that some days he has to skip physical exercise and reschedule it later in the week.

F.F. indicated that, based on the fitness program record submitted, September 13, 2024, the date of injury was not a scheduled physical exercise date, rather September 11, 2024 was listed. She indicated that physical exercise must be on scheduled days and any deviations should be reported to the supervisor. F.F. further indicated that the current documentation showed that appellant's medical documentation expired on September 4, 2024 and he was not participating during his scheduled approved days. She reported speaking to appellant's supervisor on September 18, 2024 who advised that the incident did not happen while appellant was performing his work duties and that it "happened at work around lunchtime." On September 30, 2024 appellant's supervisor noted that appellant reported "it happened around lunch time" specifically "coming back from lunch."

OWCP received a daily labor sheet for September 13, 2024, noting appellant's assignments for that day. Also submitted was a fitness program record that revealed on September 9, 2024 appellant participated in the fitness program from 10:00 a.m. to 11:00 a.m. September 10, 11, 12, and 13, 2024 were also noted on the fitness program record but it did not indicate any time, location, or activity on those dates. This document was signed by appellant's supervisor on September 17, 2024. Also submitted was a January 9, 2023 fitness education assessment signed by Dr. Douglas Dengerink, an osteopath Board-certified in family medicine, which noted that appellant was medically able to participate in physical fitness activities without limitations.

By decision dated December 6, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his alleged injury "arose during the course of employment and within the scope of compensable work factors" as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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

[2] *Id.*

limitation 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]

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence for an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[6]

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."[7] 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. In addressing the issue, the Board has held that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with his or her employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[8] In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[9]

Injuries arising on the employing establishment's premises may be approved if the claimant was engaged in activity reasonably incidental to his or her employment.[10] However, an

[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] *G.A.*, Docket No. 21-1362 (issued February 23, 2023); *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] *M.H.*, Docket No. 21-0891 (issued December 22, 2021); *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *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. § 8102(a).

[7] *See M.Z.*, Docket No. 20-1078 (issued December 16, 2022); *N.B.*, Docket No. 20-1446 (issued March 19, 2021); *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[8] *See N.B., id.*; *M.T. id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

[9] *A.G.*, Docket No. 18-1560 (issued July 22, 2020); *J.C.*, Docket No. 17-0095 (issued November 3, 2017); *Mark Love*, 52 ECAB 490 (2001).

[10] *K.A.*, Docket No. 20-0787 (issued September 16, 2021); *A.P.*, Docket No. 18-0886 (issued November 16, 2018); *S.M.*, Docket No. 16-0875 (issued December 12, 2017); *J.O.*, Docket No. 16-0636 (issued October 18, 2016); *T.L.*, 59 ECAB 537 (2008). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4a(2) (August 1992).

employee's presence on the premises does not of itself afford FECA protection.[11] In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury while in the performance of duty on September 13, 2024, as alleged.

The Board finds that the evidence of record is insufficient to establish that appellant was engaged in the employing establishment's business, reasonably fulfilling the duties of his employment, or engaged in an activity incidental thereto at the time of the September 13, 2024 incident. When he fell, appellant was riding his bicycle while allegedly participating in the employing establishment's fitness program. However, the record does not support that he was approved to participate in the fitness program. On October 29, 2024 F.F. an employing establishment representative, advised that appellant's documentation to do so expired on September 4, 2024 and he was, therefore, not in compliance with the employing establishment's fitness program directive. F.F. also noted that appellant's fitness program record did not reflect participation in the fitness program on the date of injury, September 13, 2024. She noted that, based on the fitness program record submitted, September 13, 2024, the date of injury was not a scheduled physical exercise date, rather September 11, 2024 was listed. F.F. indicated that the employing establishment's directive dictates that physical exercise must be on scheduled days and any deviations should be reported to the supervisor. Additionally, a fitness program record signed by appellant's supervisor revealed that on September 9, 2024 appellant participated in the fitness program from 10:00 a.m. to 11:00 a.m. The form also noted September 10, 11, 12, and 13, 2024 but it did not indicate any time, location, or activity on those dates. Although the incident took place on the employing establishment's premises, there is no evidence supporting that he was in the performance of duty at that time, that he was fulfilling any duties of his federal employment or engaged in an activity reasonably incidental thereto. Thus, the Board finds that he has not established that he sustained an injury in the performance of duty on September 13, 2024, as alleged.[13]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[11] *Id*. at Chapter 2.804.4c(2) (August 1992).

[12] *J.O.*, Docket No. 16-0636 (issued October 18, 2016).

[13] *Id*. *See also J.N.*, Docket No. 19-0045 (issued June 3, 2019).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury while in the performance of duty on September 13, 2024, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2025
Washington, DC

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

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

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