United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
	)	**Docket No. 19-0765**
and	)	**Issued: August 20, 2019**
	)	
U.S. POSTAL SERVICE, DELTONA PINES POST OFFICE, Deltona, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 25, 2019 appellant filed a timely appeal from a February 14, 2019 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 an injury in the performance of duty on September 19, 2018, as alleged.

FACTUAL HISTORY

On September 20, 2018 appellant, then a 41-year-old program manager, filed a traumatic injury claim (Form CA-1) alleging that at 6:30 p.m. on September 19, 2018 he sustained anterior cruciate ligament (ACL) and medial and lateral meniscus tears and additional injuries to his right

[1] 5 U.S.C. § 8101 *et seq.*

knee while in the performance of duty. He indicated that he injured himself while playing volleyball with a group of employees at the employing establishment's National Center for Employee Development (NCED) in Norman, Oklahoma. During the third game, appellant's foot was planted in the sand and when he turned to hit the ball, he heard a loud pop in his right knee. He could not put any weight on his leg and had to be carried by his coworkers, R.W., T.W., and T.H.

On the reverse side of the claim form A.D., appellant's supervisor, checked a box marked "No" indicating that appellant was not injured in the performance of duty as he was on Norman training facility property after work hours when his injury occurred and the activity was not a required event. The employing establishment noted that his injury did not occur on a day of travel to and from the facility. It further noted that appellant's regular work hours were from 8:00 a.m. to 5:00 p.m., Monday through Friday. The employing establishment noted that he stopped work on September 21, 2018.

OWCP subsequently received a right knee magnetic resonance imaging (MRI) scan dated September 24, 2018 by Dr. Kevin W. McClean, a Board-certified diagnostic radiologist, who diagnosed ACL tear/disruption, mild medial collateral ligament sprain, ill-defined tear of the posterior horn of the medial meniscus, fraying and tearing of the free edge of the body of the lateral meniscus with additional fraying of the posterior horn, bony contusion within the posterior periphery of the medial and lateral tibial plateaus, and focal near full-thickness to full-thickness cartilage defect within the inferomedial aspect of the lateral patellar facet.

In a development letter dated October 10, 2018, OWCP informed appellant of the factual and medical deficiencies of his claim. It provided a questionnaire for his completion regarding the circumstances of his claimed September 19, 2018 injury, including whether he was on employing establishment premises at the time and whether he was performing his regularly assigned duties. OWCP also requested that appellant provide a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported work incident caused or aggravated his medical condition. In a separate development letter of even date, it requested that the employing establishment answer several questions, including whether, at the time of the claimed employment injury, appellant was on premises which were owned, operated, or controlled by the employing establishment, and whether he was performing official duties or engaged in activities reasonably incidental to his job. OWCP afforded both parties 30 days to respond.

On October 18, 2018 appellant responded to OWCP's development questionnaire. He noted that at the time of injury he was on official travel status from Sunday, September 16 through Thursday, September 20, 2018. Appellant was one of seven trainers who were providing training for a national business mall entry meeting at NCED. He again contended that his claimed injury occurred on the employing establishment premises. Appellant related that the only time he was off the premises was when he received treatment for his injury. He contended that employing establishment employees on official travel status requiring an overnight stay were considered to be in compensable work hour status the entire time on such status. Appellant related that "I was not required to participate in the activity." He was invited to play by his coworkers and his supervisor, A.D. Appellant claimed that the employing establishment derived benefits from his participation in the volleyball game, which included exercise for business mailer support group

members who had long days of providing training, bonding, and teambuilding. He indicated that this seemed like a healthy way to unwind after very long and stressful days. Appellant noted that no other employees were required to participate in the activity. He maintained that the employing establishment provided the NCED training facility for the activity, volleyball, and court. Appellant did not believe that his participation in the activity was unauthorized or inappropriate.

Appellant submitted additional medical evidence, which addressed his right knee conditions and medical treatment. He also submitted a portion of the Injury Compensation for Federal Employees Publication CA-810 regarding coverage of an injury in various circumstances under FECA.

In a statement dated October 10, 2018 and received on November 14, 2018, the employing establishment responded to OWCP's development letter. It responded "Yes" when asked, whether at the time of injury, appellant was on premises it owned, operated, and controlled, and provided a picture of the premises. The employing establishment noted that he was providing training for the week at its Norman training facility, which had a hotel. It contended that appellant opted into a voluntary volleyball game with others. The employing establishment responded "No" when asked, whether at the time of injury, he was engaged in official duties which required him to be off the premises at the time of injury. It also responded "No" when asked, whether appellant was performing assigned duties or any activity which, by nature, was considered reasonably incidental to his assignment.

By decision dated November 16, 2018, OWCP denied appellant's claim, finding that he was not in the performance of duty when injured on September 19, 2018. It found that, although he was in official travel status, his participation in the volleyball game on the employing establishment's premises was not mandatory, and he was not performing duties incidental to his employment or from which his employing establishment derived a substantial benefit.

In letters and an appeal request form received by OWCP on December 4 and 6, 2018, appellant requested reconsideration. He again referenced the Injury Compensation for Federal Employees Publication CA-810 and reiterated that he was injured in the performance of duty as his injury occurred on employing establishment premises while he was on travel status.

OWCP, by decision dated February 14, 2019, denied modification of its prior decision. It noted that, according to the employing establishment, while appellant's injury occurred on its premises, his participation in the volleyball game was not related to not an official duty reasonably incidental to his assignment.

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,[2] that an injury was sustained in the performance of duty as alleged,

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3] 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.[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 stated to be engaged in the master's business, at a place where the employee may 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.[6] This alone is insufficient 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]

The Board has held that, where an employee is on travel status or a temporary duty assignment, he or she is covered by FECA 24 hours a day with respect to any injury that results from activities essential or incidental to his or her temporary assignment.[8]

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 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.[9]

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[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *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).

[5] *See 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).

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

[7] *See M.T., id.*; *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[8] *D.R.*, Docket No. 16-1395 (issued February 2, 2017); *T.C.*, Docket No. 16-1070 (issued January 24, 2017).

[9] *P.R.*, Docket No. 17-1038 (issued September 22, 2017); *S.B.*, Docket No. 11-1637 (issued April 12, 2012); *Ricky A. Paylor*, 57 ECAB 568 (2006); *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993); *Kenneth B. Wright*, 44 ECAB 176 (1992); *see also* A. Larson, *The Law of Workers' Compensation* § 22.00 (2015).

The mere fact that a claimant was on the premises at the time of injury is not sufficient to establish entitlement to compensation benefits. It must also be established that the claimant was engaged in activities which may be described as incidental to the employment, *i.e.*, that he or she was engaged in activities which fulfilled her employment duties or responsibilities thereto.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on September 19, 2018, as alleged.

Although appellant was on the employing establishment premises when he injured his right knee on September 19, 2018 while playing volleyball, the injury did not occur during lunch or recreational period as a regular incident of his employment, but after his duty hours had ended.[11] Appellant, by his own admission, voluntarily played a game of volleyball after he completed his work duties. The employing establishment related that the volleyball game was not a part of appellant's work or tasks incidental to his assignment while on temporary travel duty status.[12] Thus, the Board finds that the evidence of record is insufficient to establish that appellant was injured during a lunch or recreational period as a regular incident of his employment.[13]

The Board further finds that appellant has not established an express or implied requirement to participate in the volleyball game. Appellant acknowledged his participation in the volleyball game was not required by the employment establishment. He indicated that his participation was in response to an invitation by a group of fellow employees asking him to play. Thus, the record establishes that participation in the activity was purely voluntary on the part of appellant and that the employing establishment did not make the activity a part of his temporary duty assignment.[14]

Appellant contended that the employing establishment derived a substantial direct benefit from his participation in the volleyball game as it provided exercise and a teambuilding activity for himself and his group members. While the employing establishment provided equipment and facilities, the only benefit derived from this activity was by appellant and his team for their improved health and morale while away from home.[15] Thus, the Board finds the evidence of record does not establish that the employing establishment derived a direct benefit from appellant's participation in a volleyball game beyond the intangible value of improvement in health and

[10] *P.R.*, *id.*; *M.C.*, Docket No. 16-0824 (issued September 1, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *Ricky A. Paylor*, *id.*

[11] *See Lawrence J. Kolodzi*, *supra* note 9.

[12] *See Lawrence J. Kolodzi*, *supra* note 9 (finding that the employee deviated from his temporary-duty assignment for personal and recreational purposes when he was injured at a health club playing racquetball after his workday had ended).

[13] *See S.B.*, Docket No. 10-0842 (issued December 9, 2010).

[14] *Id.*

[15] *Id.*; *H.S.*, 58 ECAB 554 (issued June 14, 2007).

morale that is common to all kinds of recreation and social life. The intangible value of improved health or morale, in and of itself, does not bring a recreational activity within the orbit of employment.[16]

For these reasons, the Board finds that appellant has not met his burden of proof to establish an injury on September 19, 2018 in the performance of duty, as alleged.

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 on September 19, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2019
Washington, DC

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

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

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

[16] *J.M.*, Docket No. 16-1418 (issued September 20, 2017); *J.S.*, Docket No. 15-0510 (issued June 20, 2015); *S.B.*, *supra* note 9; *Ricky A. Paylor*, *supra* note 9; *Lawrence J. Kolodzi*, *supra* note 9; *see also* Larson, *supra* note 9.