

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

G.S., Appellant)	
)	
and)	Docket No. 24-0456
)	Issued: December 19, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
W.G. (BILL) HEFNER SALISBURY VA)	
MEDICAL CENTER, Salisbury, NC, Employer)	
)	

Appearances: *Case Submitted on the Record*
Daniel F. Read, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On March 27, 2024 appellant, through counsel, filed a timely appeal from a February 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the February 26, 2024 decision, OWCP received additional evidence. 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 on October 7, 2023, as alleged.

FACTUAL HISTORY

On October 27, 2023 appellant, then a 61-year-old Department of Veterans Affairs (VA) police officer, filed a traumatic injury claim (Form CA-1) alleging that, on Saturday October 7, 2023 at approximately 6:30 p.m., he ruptured his quadriceps tendon when he fell from his bicycle while in the performance of duty. On the reverse side of the claim form, the employing establishment checked the box marked “No” in response to whether appellant was in the performance of duty at the time of injury. It noted that he was injured outside of duty hours/days while attending the VA Law Enforcement Training Center (LETC) in North Little Rock, Arkansas. The employing establishment further denied that appellant was performing any job duties or incidental duties at the time of the injury. Appellant did not stop work.

In an October 31, 2023 e-mail response to an employing establishment human resources (HR) specialist, appellant explained that on October 7, 2023 he was on approved travel to attend the VA Police Academy and that part of the program included a physical fitness test. He stated that he, along with another student, continued their physical fitness training by riding bicycles for low impact aerobics training and that during this activity, he ruptured his quadriceps tendon.

OWCP continued to receive evidence, including diagnostic and physical therapy reports from October 7, 2023, which documented appellant’s complaints of right knee pain after falling off a bicycle on October 7, 2023 during police training. In an October 17, 2023 report, Dr. Robert Morgan, a Board-certified orthopedic surgeon, diagnosed a right quadriceps tendon rupture 10 days status post rupture. The record reflects that appellant underwent right quadriceps tendon reconstruction repair on October 24, 2023. On November 13, 2023 he returned to work in a light-duty assignment.

An October 10, 2023 memorandum from C.H., Director of LETC, indicated that appellant did not successfully complete the VA Police Officer Standardized Training (POST) course held October 2 through November 20, 2023 at the LETC in North Little Rock, Arkansas, due to an injury received off duty.

In a November 24, 2023 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP requested further information to determine whether appellant was in the performance of duty at the time of his injury. It afforded him 60 days to submit the necessary evidence. No response was received.

In a follow-up letter dated January 3, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence was insufficient to establish his claim. It noted that he had 60 days from the November 24, 2023 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.

OWCP continued to receive evidence.

In an undated statement, appellant related that he began his course at the VA Police Academy on Monday, October 2, 2023, at the LETC in North Little Rock, Arkansas. On Tuesday, October 3, 2023, he participated in a practice physical fitness test which he passed, but he felt he could improve on the results. On Saturday, October 7, 2023, appellant and another student, A.B., engaged in further training to improve their physical fitness test scores. He indicated that they ran in the morning and biked in the afternoon. Appellant related that he had brought his personal bike for that purpose. While riding on the employing establishment premises, he fell over a curb and the VA police were called. Appellant indicated that he was transported by ambulance to the hospital. He indicated that he reported back to his workstation on October 12, 2023.

In a January 26, 2024 response, the employing establishment advised that there was no dispute that appellant was on travel duty attending the LETC in North Little Rock, Arkansas, and that he was approved to attend training from October 2 through November 20, 2023. It noted that appellant's assigned tour of duty during that time was 7:00 a.m. through 6:00 p.m., Monday through Friday. The employing establishment reiterated that he was not on duty when he was injured at 6:30 p.m. on Saturday, October 7, 2023. It specifically noted that he had used his personal bike which he claimed he brought to further train and improve his physical fitness test score. The employing establishment contended that the injury occurred off the agency's premises and appellant was not engaged in official "off-premises" duties.

On February 5, 2024 OWCP received a copy of appellant's signed development questionnaire dated December 20, 2023. Appellant indicated that the employing establishment would benefit by having a more physically fit employee to function as a police officer. In addition to increasing his physical fitness test score, he also hoped to bring home a top student award. Appellant denied that his participation violated any rules or regulations of the employing establishment, noting that students were encouraged to participate in physical activity. He noted that he was advised to avoid bicycling off base as that area was known to be dangerous. Appellant indicated that the injury occurred on the employing establishment premises, but it was not during regular working hours as he was working out to train for and pass the physical fitness test, a requirement for passing the course. He noted that his bicycle was privately owned, and that the employing establishment provided a wellness/weight room for working out.

By decision dated February 5, 2024, OWCP denied appellant's claim, finding that the requirements were not met to establish that he sustained an injury and/or medical condition during the course of employment and within the scope of compensable work factors, as defined by FECA. It found that appellant had not provided an accident/police report as recorded by the employing establishment and did not return the development questionnaire within the allotted time.

On February 12, 2024 appellant, through counsel, requested reconsideration. Counsel argued that appellant's injury occurred in the performance of duty as he was on temporary travel status and engaged in an activity incidental to the travel activity. He also noted that the injury occurred on employing establishment premises. In support of the request for reconsideration OWCP received a February 6, 2024 witness statement from A.B., who related that he was riding his bicycle with appellant when he fell off his bike. A.B. explained that they were both in their first week of the police academy and were doing various exercises to ensure that they passed the physical fitness test.

By decision dated February 26, 2024, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

The Board has interpreted the phrase “sustained while in the performance of duty” to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”⁸ The phrase “in the course of employment” encompasses the work setting, the locale, and time of injury. The phrase “arising out of the employment,” encompasses not only the work setting, but also a causal concept with the requirement being that an employment factor caused the injury.⁹ 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.¹⁰ In deciding whether an injury is covered by FECA, the test is whether, under all circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.¹¹

⁴ *Supra* note 2.

⁵ *K.R.*, Docket No. 21-0308 (issued May 16, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

⁹ *See A.S.*, Docket No. 18-1381 (issued April 8, 2019); *D.L.*, 58 ECAB 667 (2007); *Mary Keszler*, 38 ECAB 735, 739 (1987).

¹⁰ *A.S., id.*; *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler, id.*

¹¹ *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).

The Board has held that, where an employee is on travel status or a temporary-duty (TDY) 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.¹²

With regard to recreational or social activities, the Board has held that 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; or (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 benefit from the activity beyond the imaginable value of improvement in employee health and morale is common to all kinds of recreation and social life.¹³

ANALYSIS

The Board finds that appellant has met his burden of proof to establish an injury in the performance of duty on October 7, 2023, as alleged.

Whether an injury occurs in the performance of duty is a preliminary issue to be addressed before the remaining merits of the claim are adjudicated.¹⁴

As noted above, FECA covers an employee 24 hours a day when the employee is on TDY status and engaged in activities essential or incidental to such duties, unless the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, which are not reasonably incidental to the duties of the temporary assignment contemplated by the employer.¹⁵

In the present case, the Board notes that there is no dispute that appellant was injured on the employing establishment's premises while on TDY to attend the VA Police Academy and that part of the program included a physical fitness test. He alleged that he injured himself on Saturday, October 7, 2023 at approximately 6:30 p.m. while engaging in physical fitness training by riding his bicycle for low impact aerobics training to improve his physical fitness score, be a more physically fit employee, and to bring home a top student award. As appellant's activity of riding his bicycle on the employing establishment's premises for low impact aerobics training to improve his physical fitness score was reasonably incidental to the duties of the temporary assignment contemplated by the employer, which included a physical fitness test, the Board finds that appellant was in the performance of duty.¹⁶ Therefore, the case shall be remanded to OWCP for

¹² *D.R.*, Docket No. 16-1395 (issued February 2, 2017); *T.C.*, Docket No. 16-1070 (issued January 24, 2017).

¹³ *N.B.*, Docket No. 20-1446 (issued March 19, 2021); *L.B.*, Docket No. 19-0765 (issued August 20, 2019); *S.B.*, Docket No. 11-1637 (issued April 12, 2012); *Ricky A. Paylor*, 57 ECAB 568 (2006); *see also* A. Larson, *The Law of Workers Compensation* § 22.00 (2015).

¹⁴ *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *see also M.D.*, Docket No. 17-0086 (issued August 3, 2017).

¹⁵ *K.R.*, *supra* note 5; *D.R.*, Docket No. 16-1395 (issued February 2, 2017); *T.C.*, Docket No. 16-1070 (issued January 24, 2017).

¹⁶ *C.B.*, Docket No. 21-0323 (issued April 18, 2024).

further development, to determine whether he sustained an injury causally related to the accepted October 7, 2023 employment incident. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an injury in the performance of duty on October 7, 2023, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2024 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 19, 2024
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