



## ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted October 16, 2018 employment incident.

## FACTUAL HISTORY

On December 17, 2018 appellant, then a 58-year-old physician, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2018 she sustained an injury to her left shoulder, arm, and hand while in the performance of duty. She explained that after receiving a flu shot at work she experienced swelling in her left hand and arm with pain and restricted movement in her left shoulder. Appellant did not stop work.

In a December 17, 2018 medical report, Dr. Gene Pellerin, Board-certified in emergency medicine, noted that appellant received an influenza immunization in her left deltoid on October 16, 2018. Appellant mentioned that she felt pain in her left shoulder, hand, and arm as well as swelling in her left hand, wrist, and fingers. Dr. Pellerin opined that the probable mechanism was disease secondary to the pain. He referred appellant to a rheumatologist and recommended physical therapy to treat her pain.

In a development letter dated January 2, 2019, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence necessary to establish her claim. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP provided a questionnaire for her completion and afforded her 30 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations.

In response, appellant provided a December 26, 2018 medical report from Dr. Pellerin in which he noted that she was still experiencing shoulder pain due to inflammation. Dr. Pellerin also noted appellant's altered gait, which exacerbated her preexisting condition of plantar fasciitis. He related that she believed that her condition was related to her injection, however, he added that he was still waiting on a consultation from a rheumatologist to determine the cause of her symptoms and further noted that there was no evidence that appellant's symptoms were due to her vaccination.

In a January 14, 2019 medical report, Dr. Pellerin reported that a tendon injury was the cause of appellant's shoulder injury and left hand swelling. In a diagnostic report of even date, Dr. Jay Mo, a Board-certified radiologist, noted that appellant was experiencing pain in the area of her injection site and asked whether her tendon was disrupted. In a magnetic resonance imaging (MRI) scan of her left shoulder, he noted an impression of mild superior rotator cuff tendinopathy and findings suggestive of mild inflammation.

In response to OWCP's questionnaire, the employing establishment submitted a January 15, 2019 statement noting that appellant's flu shot was administered during work hours while she was on the employing establishment's property. It also explained that she was not

required to receive a flu shot and that if she chose not too she would be required to wear a mask while in patient-care areas.

By decision dated February 6, 2019, OWCP found that the factual evidence of record was sufficient to establish that the October 16, 2018 employment incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish a medical diagnosis in connection with the employment incident. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

### **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 timely filed within the applicable time limitation of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment,

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>8</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted October 16, 2018 employment incident.

In medical reports dated December 17, 2018 to January 14, 2019, Dr. Pellerin opined that the probable mechanism was disease secondary to appellant's pain and later that there was no evidence that her symptoms were due to her vaccination. Further, in his January 14, 2019 report, he concluded that a tendon injury was the cause of appellant's shoulder injury and left hand swelling. However, Dr. Pellerin neither diagnosed a medical condition, nor provided rationale explaining causal relationship between that medical condition and the accepted employment incident. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, his medical reports are of limited probative value.<sup>10</sup>

Additionally, appellant submitted a January 14, 2019 diagnostic report from Dr. Mo, who noted that appellant was experiencing pain in the area of her injection site and asked whether her tendon was disrupted. In an MRI scan of her left shoulder, Dr. Mo noted an impression of mild superior rotator cuff tendinopathy and findings suggestive of mild inflammation. The Board has held, however, that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between his employment duties and a diagnosed condition.<sup>11</sup> As such, these reports are insufficient to establish appellant's claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a medical condition causally related to her October 16, 2018 employment incident.<sup>12</sup> Appellant, therefore, has not met her 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 her burden of proof to establish a medical condition causally related to the accepted October 16, 2018 employment incident.

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<sup>9</sup> *T.M., id.; J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>10</sup> *J.F.*, Docket No. 18-0904 (issued November 27, 2018); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

<sup>11</sup> *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>12</sup> *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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