

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 5, 2021 appellant, then a 40-year-old agent, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2021 he sustained shooting pain from his right shoulder radiating to his fingertips while in the performance of duty. He advised that he had previously experienced a tingling sensation and intermittent hand cramping with reduced right arm mobility. Appellant related, “The tenderness of the muscle and nerve has been on and off possibly starting after my [second] Moderna vaccine on February 22, 2021.” On the claim form, the employing acknowledged that appellant was in the performance of duty at the time of the alleged incident.

In a development letter dated March 3, 2022, OWCP informed appellant that his claim had initially appeared to be a minor injury that resulted in minimal or no lost time from work, and while limited expenses had been authorized, a formal decision was now required. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP requested that appellant provide a detailed description of the incident on October 18, 2021 and clarify whether he was claiming a traumatic injury or occupational disease. It afforded him 30 days to provide the necessary evidence.

In a March 17, 2022 response, appellant advised that he was claiming a traumatic injury and provided the same description of injury as on his Form CA-1.

On April 4, 2022 OWCP informed appellant that it had changed his date of injury to reflect the date that he became aware of his condition, February 22, 2021, the date he received the second dose of the Moderna vaccine.

By decision dated May 5, 2022, OWCP denied appellant’s traumatic injury claim. It noted that he had received his vaccination prior to the September 9, 2021 executive order mandating COVID-19 vaccinations for most federal employees. OWCP found that appellant had not submitted any documentation supporting that the vaccination he had received was administered or sponsored by the employing establishment.

In a May 18, 2022 memorandum of telephone call (Form CA-110), appellant asserted that he had been unable to obtain the information showing that the employing establishment sponsored his vaccination. OWCP advised him to contact human resources at the employing establishment.

On May 24, 2022 appellant requested reconsideration.

By decision dated August 4, 2022, OWCP denied appellant’s reconsideration request as he had not raised an argument or submitted evidence sufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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

² *Id.*

States within the meaning of FECA, that the claim was timely filed within the applicable time 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 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.”⁷ 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.⁸ To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said 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.⁹ 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.¹⁰

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 *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 *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 See 5 U.S.C. § 8102(a); see *J.N.*, Docket No. 19-0045 (issued June 3, 2019).

⁷ See *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

⁸ *L.B.*, Docket No. 19-0765 (issued August 20, 2019); *G.R.*, Docket No. 16-0544 (issued June 15, 2017); *Cheryl Bowman*, 51 ECAB 519 (2000).

⁹ *A.S.*, Docket No. 18-1381 (issued April 8, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

¹⁰ *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).

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

On his Form CA-1, appellant alleged that he sustained an injury on October 18, 2021 when he experienced pain radiating from his shoulder into his fingertips. However, by letter dated April 4, 2022, OWCP informed appellant that it had changed his date of injury to February 22, 2021, the date he received the second dose of the Moderna vaccine. The initial issue, consequently, is whether appellant was in the performance of duty on February 22, 2021 at the time he received his vaccination.

In a March 3, 2022 development letter, OWCP requested that appellant submit additional factual and medical information, including a detailed description of the incident on October 18, 2021. It did not ask for information regarding whether the employing establishment had provided or sponsored his February 22, 2021 COVID-19 vaccination. OWCP further failed to send a development letter to the employing establishment requesting information about the factual aspect of appellant's claim, including whether it had provided or encouraged the vaccination or arranged the time and place of the vaccination.¹¹ OWCP's procedure provide that, in certain types of claims, such as performance of duty and/or stress claims, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹²

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.¹³ While a claimant has the responsibility to establish entitlement to compensation, it shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.¹⁴ As OWCP failed to properly develop the claim in accordance with its procedures, the case must be remanded for further development of the claim.¹⁵

Accordingly, the Board will remand the case to OWCP for further development. On remand it shall obtain all relevant information from appellant and the employing establishment necessary to determine whether he was in the performance of duty when he received his COVID-19 vaccination on February 22, 2021. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision

¹¹ See *M.D.*, *Order Granting Motion to Reverse*, Docket No. 21-1289 (issued May 3, 2022).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011); see also *M.G. (R.G.)*, Docket No. 16-0625 (issued December 9, 2016).

¹³ See *S.T.*, Docket No. 20-0388 (issued September 16, 2020); *Vanessa Young*, 55 ECAB 575 (2004).

¹⁴ *B.P.*, Docket No. 20-1040 (issued June 1, 2022); *A.M.*, Docket No. 18-0630 (issued December 10, 2018).

¹⁵ See *S.T.*, Docket No. 20-0388 (issued September 16, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 5 and August 4, 2022 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board