

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

J.R., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION, Progreso, TX, Employer**

**Docket No. 23-0141
Issued: January 8, 2026**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 10, 2022 appellant filed a timely appeal from a July 28, 2022 merit decision and an October 5, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained a reaction to a COVID-19 vaccination on March 29, 2021 in the performance of duty, as

¹ The Board notes that, during the pendency of this appeal, OWCP issued a January 31, 2023 decision, which denied modification of the July 28, 2022 decision. The Board concludes that OWCP's January 31, 2023 decision is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same underlying issue in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see A.B.*, Docket No. 21-1170 (issued August 28, 2023); *J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *Order Remanding Case, J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8101 *et seq.*

alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 7, 2022 appellant, then a 55-year-old motor carrier safety specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2021 he experienced burning pain, swelling, tingling in his right arm, nausea, vomiting, and diarrhea as a reaction to his second COVID-19 vaccination that he received while in the performance of duty. He asserted that the vaccination had aggravated his post-COVID-19 symptoms. On the reverse side of the claim form, the employing establishment challenged the claim as it had not sponsored or administered the vaccination.

Appellant submitted an April 5, 2022 report and duty status report (Form CA-17) from a physician assistant.

In a development letter dated June 10, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the requested information.

Subsequently, OWCP received a report dated May 10, 2022 from Dr. Joel L. Solis, Board-certified in family practice. Dr. Solis noted that appellant had a history of COVID-19 on June 6, 2020. He diagnosed chronic post-COVID-19 syndrome, bilateral tinnitus, bilateral sensorineural hearing loss, edema of the hand, and arthropathy of unknown etiology. OWCP also received CA-17 forms dated May and June 2022.

By decision dated July 28, 2022, OWCP denied appellant's traumatic injury claim. OWCP found that appellant had not established that he was in the performance of duty at the time of the identified work incident as the factual evidence failed to show that the vaccine was administered or sponsored by the employing establishment.

OWCP subsequently received additional evidence, including a September 8, 2020 safety advisory from the employing establishment setting forth ways to minimize exposure to COVID-19 and e-mails from supervisors at the employing establishment from September 2020 addressing health and safety concerns related to the pandemic.

A January 19, 2021 e-mail from the employing establishment identified employees who were considered essential employees and would be among the first to qualify for a COVID-19 vaccination.

In a February 23, 2021 memorandum, the employing establishment advised that employees would be granted excused absences of up to four hours to receive a COVID-19 vaccination. The memorandum accompanied a policy bulletin regarding excused absences to facilitate vaccinations. In an e-mail dated February 24, 2021, the employing establishment advised that employees could receive up to four hours of excused absences to obtain a COVID-19 vaccination. In a March 17, 2021 e-mail, it explained how to request approval for vaccine-related absences. In an e-mail dated September 7, 2021, the employing establishment requested attestation that employees had obtained their vaccination for COVID-19.

Appellant further submitted the results of diagnostic testing dated July through November 2020. An August 24, 2021 computerized tomography scan of the chest showed diffuse ground-glass opacities consistent with pneumonia from COVID-19.

In a report dated August 21, 2022, Dr. Solis diagnosed an adverse reaction to a COVID-19 mRNA vaccination, right arm neuropathy, myalgias, post-COVID-19 condition, bilateral tinnitus, and an adjustment disorder with depressed mood, which he attributed to appellant “performing his work-related job duties after being mandated by [his] agency to get vaccinated against COVID-19.” He advised that medical studies supported neurological complications from COVID-19 vaccinations.

On September 22, 2022 appellant requested reconsideration. OWCP subsequently received June 9 and 28, and August 16, 2022 reports from a physician assistant.

On September 29, 2022 the employing establishment reiterated that it had not sponsored or administered appellant’s March 28, 2021 COVID-19 vaccination. It maintained that the evidence of record did not support that it had sponsored or administered the vaccination.

By decision dated October 5, 2022, OWCP denied appellant’s request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation of FECA,⁴ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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

³ *Id.*

⁴ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.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

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that he sustained a reaction to a COVID-19 vaccination on March 29, 2021 in the performance of duty, as alleged.

OWCP’s procedures provide that, if the COVID-19 vaccine was received prior to September 9, 2021, coverage is “afforded only if the vaccine was administered or sponsored by the employing agency.”¹² As appellant received his vaccine on March 29, 2021 he must establish that the vaccine was administered or sponsored by the employing establishment.

Appellant has not submitted any evidence establishing that the employing establishment provided or sponsored the vaccine. Consequently, the Board finds that appellant has not established that he was in the performance of duty at the time he received his COVID-19 vaccination on March 29, 2021.

⁷ See 5 U.S.C. § 8102(a); see *M.R.*, Docket No. 20-1072 (issued November 10, 2022); *J.N.*, Docket No. 19-0045 (issued June 3, 2019).

⁸ See *B.W.*, Docket No. 22-0907 (issued December 13, 2022); *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).

¹² FECA Bulletin No. 22-01 (issued October 1, 2021).

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.¹³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On reconsideration, appellant submitted a February 23, 2021 memorandum from the employing establishment advising that employees would be granted up to four hours of excused absences to receive a COVID-19 vaccination. He further submitted e-mails dated February 24 and March 17, 2021 from the employing establishment regarding implementation of the four hours of excused absence to obtain a COVID-19 vaccination. In an e-mail dated September 7, 2021, the

¹³ 5 U.S.C. § 8128(a); *see C.V.*, Docket No. 22-0078 (issued November 28, 2022); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁶ *Id.* at § 10.608(a); *see also D.B.*, Docket No. 22-0518 (issued November 28, 2022); *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁷ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

employing establishment requested attestation that employees had been vaccinated for COVID-19. The Board finds that this evidence is relevant to the underlying issue of whether the employing establishment administered or sponsored the vaccination.¹⁸ Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁹ Accordingly, the Board shall set aside OWCP's October 5, 2022 nonmerit decision and remand the case for an appropriate merit decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a reaction to a COVID-19 vaccination on March 29, 2021 in the performance of duty, as alleged. The Board further finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed. The October 5, 2022 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 8, 2026
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

¹⁸ *Order Granting Motion to Reverse, M.D.*, Docket No. 21-1289 (issued May 3, 2022).

¹⁹ 20 C.F.R. § 10.606(b)(3); *see M.N.*, Docket No. 22-0243 (issued June 28, 2022); *see also S.C.*, 20-1661 (issued May 6, 2022); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).