

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

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C.S., Appellant)	
)	
and)	Docket No. 23-0870
)	Issued: August 2, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
OMAHA VA MEDICAL CENTER, Omaha, NE,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 14, 2023 appellant filed a timely appeal from a June 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 exposure to COVID-19 in the performance of duty, as alleged.

FACTUAL HISTORY

On April 4, 2023 appellant, then a 53-year-old inventory management specialist, filed an occupational disease claim (Form CA-2) alleging that he was exposed to COVID-19 due to factors

¹ 5 U.S.C. § 8101 *et seq.*

of his federal employment. He indicated that he first became aware of the condition and of its relationship to his federal employment on March 28, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant first reported his condition on March 29, 2023, and his last date of exposure was March 28, 2023. It further indicated that he returned to work on April 4, 2023.

Appellant submitted a polymerase chain reaction (PCR) test result dated March 30, 2023, administered by the employing establishment, which was positive for COVID-19. He also submitted a leave analysis indicating that he took sick leave from work from March 29 to 31, 2023.

In an April 4, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. No response was received.

In a follow-up letter dated May 12, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the April 4, 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.

In a note dated May 19, 2023, Dr. Samia A. Ochia, an employing establishment physician, who is Board-certified in family medicine, related that appellant's employment rendered him at increased risk for exposure to COVID-19. She noted that appellant had a positive COVID-19 test that was recorded by the employing establishment on March 30, 2023. Dr. Ochia advised that he was required to use sick leave for five days in accordance with the employing establishment's policy after a COVID-19 diagnosis.

By decision dated June 12, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record did not establish exposure to COVID-19. It found that he had not submitted a response to the questionnaire which provided a detailed statement explaining the specific work exposure alleged to have caused the diagnosed condition. Therefore, the requirements have not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

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 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

² *Id.*

³ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

To establish a claim for COVID-19 diagnosed after January 27, 2023, a claimant must provide: (1) evidence of a COVID-19 diagnosis; (2) evidence that establishes the claimant actually experienced the employment incident(s) or factor(s) alleged to have occurred; (3) evidence that the alleged incident(s) or factor(s) occurred while in the performance of duty; and (4) evidence that the COVID-19 condition is found by a physician to be causally related to the accepted employment incident(s) or factor(s). A rationalized medical report establishing a causal link between a diagnosis of COVID-19, and the accepted employment incident(s)/factor(s) is required in all claims for COVID-19 diagnosed after January 27, 2023.⁶

ANALYSIS

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

Appellant alleged that he contracted COVID-19 due to exposure at work in the performance of duty. In a development letter dated April 4, 2023, OWCP requested that he provide factual and medical information. OWCP, however, failed to request information from the employing establishment regarding the circumstances surrounding appellant's alleged work exposure. Its procedures provide that OWCP is responsible for requesting evidence.⁷

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁸ OWCP's procedures provide that an example of this is exposure data.⁹ OWCP has an obligation to see that justice is done.¹⁰

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ FECA Bulletin No. 23-02 (issued December 15, 2022). In accordance with the Congressional intent to end the specialized treatment of COVID-19 claims for Federal workers' compensation under section 4016 of the American Rescue Plan Act (ARPA) of 2021, Public Law 117-2 (March 11, 2021), OWCP issued FECA Bulletin No. 23-02, which updated its procedures for processing claims for COVID-19 diagnosed after January 27, 2023.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4 (June 2011).

⁸ *A.J.*, Docket No. 23-0883 (issued May 23, 2024); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013). See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁹ *Supra* note 7 at Chapter 2.800.5c.

¹⁰ See *B.J.*, Docket No. 24-0322 (issued May 21, 2024); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

As OWCP failed to request information from the employing establishment necessary to determine whether appellant sustained exposure at work to COVID-19, the case must be remanded for further development of the claim. Following this and any 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.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 2, 2024
Washington, DC

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

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

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