

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

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| O.W., Appellant |) | |
| |) | |
| and |) | Docket No. 23-1072 |
| |) | Issued: August 14, 2024 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| LT. COL. LUKE WEATHERS, JR. MEDICAL |) | |
| CENTER, Memphis, TN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 4, 2023 appellant filed a timely appeal from a June 30, 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 her burden of proof to establish a diagnosis of COVID-19 causally related to her accepted employment exposure.

FACTUAL HISTORY

On March 13, 2023 appellant, then a 61-year-old administrative officer, filed an occupational disease claim (Form CA-2) alleging that she was exposed to COVID-19 while in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. She explained that she experienced symptoms of fever and cough while working on an upcoming inspection. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on February 14, 2023. She stopped work on February 14, 2023 and returned to work on March 23, 2023.

Appellant submitted a copy of a Polymerase Chain Reaction (PCR) test result dated February 16, 2023 which indicated that appellant was positive for COVID-19.

OWCP also received return-to-work notes dated February 16, 2023 from Dr. Kimberly S. Hudson, an internist, and dated February 17, 2023 from Dr. Jeffrey H. Lowrey, a Board-certified family practitioner, which held her off work from February 16 through 20, 2023 and from February 17 through 23, 2023, respectively.

In a March 24, 2023 narrative statement, appellant described her symptoms, and her interactions with coworkers.

In a March 24, 2023 statement, the employing establishment, explained that appellant's position requires her to interact directly with the officers, patients, visitors, and other employees, who require assistance in all areas of Police Services.

In a March 31, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

Appellant did not respond.

In a follow-up letter dated June 15, 2023, OWCP advised appellant that it had conducted an interim review of her case file, and the evidence remained insufficient to support her claim. It noted that she had been afforded 60 days from its March 31, 2023 development 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. No response was received from appellant.

By decision dated June 30, 2023, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that appellant's COVID-19 diagnosis was causally related to the accepted employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

limitation of FECA,³ 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.⁴ 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.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 appellant has not met her burden of proof to establish a diagnosis of COVID-19 causally related to her accepted employment exposure.

In support of her claim, appellant submitted return-to-work notes from two physicians; a note from Dr. Hudson dated February 16, 2023, and a note from Dr. Lowrey dated February 17, 2023. However, neither physician offered an opinion on causal relationship between appellant's COVID-19 diagnosis and her accepted employment exposure. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.⁷ This evidence is therefore insufficient to establish the claim.

Appellant also submitted a February 16, 2023 positive COVID-19 PCR test result. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address

³ *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).

⁴ *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).

⁵ *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).

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 *See C.H.*, Docket No. 23-0168 (issued June 16, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

whether the employment incident caused a diagnosed medical condition.⁸ For this reason, this report has no probative value and is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish that her diagnosed COVID-19 condition was causally related to the accepted February 14, 2023 employment exposure, the Board finds that appellant 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 diagnosis of COVID-19 causally related to her accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

⁸ See *M.S.*, Docket No. 22-0417 (issued August 8, 2022); *S.H.*, Docket No. 20-0113 (issued June 24, 2020); *M.L.*, Docket No. 18-0153 (issued January 22, 2020).