



employment. She explained that on May 15, 2023 she worked within six feet of a patient for more than 15 minutes, who had tested positive for COVID-19. Appellant subsequently became symptomatic seven days after exposure. She noted that she first became aware of the condition and of its relation to her federal employment on May 24, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on May 24, 2023, and returned to work on May 31, 2023.

On May 24, 2023 appellant was seen by Dr. Joanne Marmol-Marmolejos, a Board-certified family physician. Dr. Marmol-Marmolejos indicated that appellant tested positive for COVID-19 and placed her off work until May 29, 2023.

Appellant also submitted laboratory and antigen test results dated May 24, 2023 from an urgent care facility, which revealed that she tested positive for COVID-19.

OWCP received a narrative statement from appellant on May 31, 2023. Appellant indicated that she began to feel symptomatic on May 23, 2023, and subsequently sought treatment at an urgent care facility on May 24, 2023 where she tested positive for COVID-19 through both an antigen and polymerase chain reaction (PCR) test. She further noted that she was in direct contact with a patient who tested positive at her employing establishment, and she was within six feet for more than 15 minutes while the patient “was not” wearing their mask properly. Appellant further indicated that this was her only known confirmed exposure to a patient with COVID-19 prior to the onset of her symptoms.

In a development letter dated June 2, 2023, OWCP advised appellant of the deficiencies in her claim and provided a questionnaire for her completion. It afforded appellant 60 days to provide the necessary evidence. In a separate letter dated June 2, 2023, OWCP requested information from the employing establishment regarding appellant’s claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to respond.

OWCP received a position description for appellant’s pharmacist’s job, which included direct patient interaction in the responsibilities.

In a follow-up letter dated June 27, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the June 2, 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.

In a note dated June 19, 2023, Dr. Daniel J. Markley, a Board-certified internist, opined: “It is my medical opinion that [appellant] had a COVID exposure while at work immediately prior to developing COVID-19. There is a high likelihood that this exposure on May 15, 2023 lead to her illness on May 23, 2023.”

In a completed questionnaire received on June 29, 2023, appellant indicated that she was exposed in the emergency department to a COVID-19 patient. She further indicated that she was responsible for face-to-face assessment with emergency department patients, including assessments for administering medications used to treat COVID-19 patients. Appellant noted that she was exposed to a patient who tested positive on May 15, 2023, for at least 30 minutes while

within six feet. She also indicated that “several” work colleagues had been exposed through their work assignments and subsequently developed COVID-19. Appellant further noted that, to the best of her knowledge, she did not participate in other high-risk activities of potential exposure outside of her federal employment.

By decision dated August 3, 2023, OWCP denied appellant’s occupational disease claim, finding that she had not established that her diagnosed condition of COVID-19 was causally related to the accepted employment exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 filed within the applicable time limitation of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

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<sup>2</sup> *Id.*

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> 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.

On May 24, 2023 Dr. Marmol-Marmolejos indicated that appellant tested positive for COVID-19 and advised that she be placed off work until May 29, 2023. However, she did not provide a rationalized opinion as to whether the employment factors caused appellant's diagnosed condition of COVID-19. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>7</sup> Thus, the Board finds that this report is of no probative value and is, therefore, insufficient to establish appellant's claim.

In a note dated June 19, 2023, Dr. Markley opined that appellant was exposed to COVID-19 at work prior to developing COVID-19. He further indicated that there was a "high likelihood" that the exposure on May 15, 2023 led to her illness on May 23, 2023. While Dr. Markley offered an opinion on causal relationship, he did not provide a rationalized medical opinion linking her COVID-19 diagnosis to her accepted employment exposure. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to accepted employment factors.<sup>8</sup> This evidence is therefore insufficient to establish the claim.

Appellant submitted laboratory and antigen test results dated May 24, 2023, which revealed that she tested positive for COVID-19. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment exposure caused the diagnosed medical condition.<sup>9</sup> Thus, this evidence has no probative value and is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a diagnosis of COVID-19 and the accepted 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 the accepted employment exposure.

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<sup>7</sup> See *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>8</sup> See *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *I.D.*, Docket No. 22-0848 (issued September 2, 2022); *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

<sup>9</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 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

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

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