

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

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O.B., Appellant )	)	
and )	)	
DEPARTMENT OF VETERANS AFFAIRS, )	)	<b>Docket No. 24-0214</b>
GREATER LOS ANGELES VETERANS )	)	<b>Issued: August 14, 2024</b>
HEALTH ADMINISTRATION, Los Angeles, CA, )	)	
Employer )	)	
_____ )	)	

*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  
JANICE B. ASKIN, Judge

**JURISDICTION**

On December 29, 2023 appellant filed a timely appeal from a November 15, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**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.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 15, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On September 7, 2023 appellant, then a 65-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that on July 29, 2023 she was exposed to COVID-19 while taking care of a COVID-positive patient in the performance of duty. She indicated that she was tested for COVID-19 on August 1, 2023 with a positive result. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on August 1, 2023. She stopped work on August 3, 2023 and returned on August 23, 2023.

In an August 2, 2023 report, Dr. Amit Kothari, a Board-certified internist, indicated that appellant's August 2, 2023 COVID test was positive for COVID-19.

In a development letter dated September 13, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter dated September 13, 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. On September 26, 2023 OWCP received appellant's completed development questionnaire. Appellant explained that on July 29, 2023 she was exposed for 12 hours to a patient who was positive for COVID-19. On August 2, 2023 the patient tested positive again. Appellant then underwent testing, and she also tested positive for COVID-19.

In a follow-up development letter dated October 13, 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 September 13, 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 an August 3, 2023 note, Dr. Jeffrey R. Spina, a Board-certified internist, noted that appellant's August 2, 2023 COVID-19 PCR test was positive and she should remain off duty through August 8, 2023. He further noted that, based upon her history, she had a confirmed workplace exposure.

By decision dated November 15, 2023, OWCP denied the claim as the medical evidence of record was insufficient to establish that the COVID-19 diagnosis was causally related to the accepted work event(s).

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</sup> that an injury was sustained while in the performance of duty as alleged, and

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<sup>3</sup> *Id.*

<sup>4</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).

that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</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>6</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>7</sup>

### 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 an August 2, 2023 report, wherein Dr. Kothari indicated that appellant's August 2, 2023 laboratory test was positive for COVID-19. However, Dr. Kothari did not provide an opinion on causal relationship. 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.<sup>8</sup> This evidence is, therefore, insufficient to establish the claim.

In an August 3, 2023 note, Dr. Spina noted that appellant's August 2, 2023 COVID-19 PCR test was positive and she should remain off duty through August 8, 2023. He further noted that, based upon her history, she had a confirmed workplace exposure. However, Dr. Spina did not provide medical rationale to establish a causal link between the COVID-19 diagnosis and the accepted employment factors. Therefore, this evidence is insufficient to establish the claim.

Appellant also submitted an August 2, 2023 laboratory test result, which was positive for COVID-19. The Board has held, however, that diagnostic studies, standing alone, lack probative

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<sup>5</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>6</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>7</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.

<sup>8</sup> 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).

value as they do not address causal relationship.<sup>9</sup> This evidence is, therefore, insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a diagnosis of COVID-19 causally related to 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<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).