

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

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R.S., Appellant)	
)	
and)	Docket No. 24-0570
)	Issued: July 2, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
JOHN J. PERSHING VA MEDICAL CENTER,)	
Poplar Bluff, MO, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 May 7, 2024 appellant, through counsel, filed a timely appeal from an April 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

FACTUAL HISTORY

On August 21, 2023 appellant, then a 54-year-old custodial worker, filed an occupational disease claim (Form CA-2) alleging that he contracted COVID-19 due to factors of his federal employment. He explained that he was conducting a terminal clean in the bio room and was exposed to co-workers with COVID-19. Appellant noted that he first became aware of his condition on August 9, 2023, and realized its relation to his federal employment on that same date. He stopped work on August 9, 2023 and returned on August 21, 2023.

In an undated statement, appellant indicated that after his exposure to COVID-19, he became symptomatic on August 9, 2023. He explained that he was notified that his test was positive for COVID-19. Appellant related that he notified employee health and quarantine precautions were implemented, which required that he quarantine until August 21, 2023.

In a development letter dated August 25, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP received a note from a nurse practitioner dated August 9, 2023, advising that appellant tested positive for COVID-19, and that he was advised to quarantine through August 19, 2023 with a return to work on August 20, 2023.

In a September 13, 2023 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and whether he was exposed to other individuals who were diagnosed with COVID-19. It afforded the employing establishment 30 days to respond.

On September 11, 2023 appellant completed the development questionnaire and related that he was exposed to COVID-19 at work and that at least a dozen nurses and aids were also exposed. He denied being exposed to COVID-19 elsewhere.

On September 25, 2023 OWCP received a response from the employing establishment which concurred with appellant's allegations of being exposed to COVID-19 at work.

In a follow-up letter dated September 28, 2023, OWCP advised appellant that it had performed an interim review and that the evidence remained insufficient to establish his claim. It noted that he had 60 days from the August 25, 2023 letter to submit the requested supporting evidence. OWCP further advised that, if additional evidence was not received during that time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated November 15, 2023, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish that his diagnosed COVID-19 was causally related to the accepted employment exposure.

On November 21, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 2, 2024.

By decision dated April 17, 2024, OWCP's hearing representative affirmed the November 15, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, 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 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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a

³ *Id.*

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *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 *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.⁸ Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factor(s).⁹

ANALYSIS

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

Appellant has not submitted medical evidence addressing causal relationship between appellant’s diagnosis of COVID-19 and his accepted employment exposure. The Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

As appellant has not submitted medical evidence to establish a causal relationship between appellant’s diagnosed COVID-19 and the accepted employment exposure, the Board finds that he has not met his 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 his burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020).

¹⁰ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 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