

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

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C.S., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**EDITH NOURSE ROGERS MEMORIAL** )  
**VETERANS' HOSPITAL, Bedford, MA,** )  
**Employer** )

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**Docket No. 23-0865**  
**Issued: May 14, 2024**

*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 June 13, 2023 appellant filed a timely appeal from a June 5, 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.

**ISSUE**

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

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

## **FACTUAL HISTORY**

On March 10, 2023 appellant, then a 37-year-old dental assistant, filed an occupational disease claim (Form CA-2) alleging that she was exposed to COVID-19 due to factors of her federal employment. She explained that she assisted in a highly-generated aerosol room, working alongside a doctor who tested positive for COVID-19 the week before she did. Appellant noted that she first became aware of the condition and of its relation to her federal employment on March 1, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant first reported her condition on March 1, 2023 and her last date of exposure was February 24, 2023.

OWCP received a form report dated March 3, 2023 for contact tracing completed by the employing establishment. The form indicated that appellant's symptoms began on February 25, 2023, and that she had a positive COVID-19 home-test on March 2, 2023. It further noted her safety procedures at work including wearing masks and social distancing. Employing establishment emails dated March 3, 2023 reiterated appellant's symptom and test history and indicated a tentative return-to-work date of March 7, 2023.

Appellant submitted a polymerase chain reaction (PCR) test result dated March 7, 2023, prepared by the employing establishment's laboratory, which indicated that her test was positive for COVID-19.

In a development letter dated March 17, 2023, OWCP indicated that the evidence of record did not provide a diagnosis of any condition, nor a physician's opinion as to how the alleged employment factors resulted in a medical condition. A questionnaire was provided to appellant to substantiate the factual elements of her claim. Further, she was requested to provide a well-rationalized medical explanation from a physician as to how the employment factors caused or contributed to her diagnosed condition of COVID-19. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her claim, including comments from a knowledgeable supervisor.

In a completed questionnaire dated March 30, 2023, the employing establishment indicated that appellant worked closely with a doctor who had tested positive for COVID-19 the week prior to appellant's positive test. It further provided a list of appellant's general work duties and indicated that these duties included assisting in dental procedures, which generated "high aerosol" and required her to work closely with doctors, patients, and other coworkers.

In a follow-up letter dated April 19, 2023, OWCP advised appellant that it performed an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the March 17, 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.

OWCP received a subsequent narrative statement from the employing establishment signed by Kathleen Saunders, a nurse practitioner. Ms. Saunders noted that appellant was working alongside a dentist who had tested positive on February 17, 2023. She opined that a

direct causal relationship could be identified between the dentist's period of contagiousness and appellant's COVID-19 illness.

In a completed questionnaire received on May 11, 2023, appellant reiterated the circumstances regarding her alleged exposure to COVID-19 at work.

By decision dated June 5, 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 factors of her federal employment.

### **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 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.<sup>3</sup> 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.<sup>4</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 factors of federal employment is required in all claims for COVID-19 diagnosed after January 27, 2023.<sup>5</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.

In support of her claim, appellant submitted a letter from Ms. Saunders, a nurse practitioner. The Board has held, however, that certain healthcare providers such as physician

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

<sup>3</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *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).

<sup>5</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.

assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA and their reports do not constitute competent medical evidence.<sup>6</sup> This report is thus of no probative value and is insufficient to establish the claim.

Appellant further submitted a PCR test result dated March 7, 2023, which indicated that appellant’s test was positive for COVID-19. However, diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).<sup>7</sup>

As the medical evidence of record is insufficient to establish causal relationship between the COVID-19 diagnosis 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.

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<sup>6</sup> *H.S.*, Docket No. 20-0939 (issued February 12, 2021). Section 8101(2) of FECA provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

<sup>7</sup> *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

**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 June 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 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