

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

R.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
JAMES H. QUILLEN VA MEDICAL CENTER,
Mountain Home, TN, Employer**

**Docket No. 24-0155
Issued: May 15, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 10, 2023 appellant filed a timely appeal from October 23, 2023 merit decisions 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure; and (2) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 10, 2023 appellant, then a 30-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 23, 2023 she developed COVID-19 in the performance of duty due to exposure to two patients who tested positive for the virus, including exposure of more than 15 minutes to a patient who hugged and kissed her on the cheek and tested positive for COVID-19 within two days. She requested COP. Appellant stopped work on July 28, 2023 and returned on August 8, 2023. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured in the performance of duty.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result dated July 28, 2023, which indicated a positive result for COVID-19.

In an August 18, 2023 letter, OWCP informed appellant that it had converted her traumatic injury claim to an occupational disease claim.

In a development letter dated August 21, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP provided appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and whether she was exposed to another individual who was diagnosed with COVID-19. OWCP afforded the employing establishment 30 days to respond.

On September 2, 2023 appellant completed the development questionnaire, and explained that beginning on Friday, July 21, 2023, she aided a patient with ambulation who put his arms around her and kissed her cheek. She continued to care for this patient for the following two days. Appellant asserted that two other patients and two other employees also contracted COVID-19 on or after July 21, 2023.

In a follow-up letter dated September 14, 2023, OWCP advised appellant that it had performed an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 21, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would make a decision based on the evidence contained in the record.

The employing establishment, by letter dated October 4, 2023 reported that one patient had tested positive for COVID-19 each day on July 21, 24, and 27, 2023. It noted that appellant worked from July 17 through 27, 2023 in direct patient care one to two times every one to two hours and was then told to isolate by employee health. The employing establishment further asserted that all three patients were masked and that two required personal protective equipment because of chronic isolation needs.

By decision dated October 23, 2023, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish that her diagnosed COVID-19 was causally related to the accepted employment exposure. By separate decision of even date, it denied her claim for COP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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.³ 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.⁴

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, 2023.⁵

ANALYSIS -- ISSUE 1

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 positive COVID-19 PCR test. However, diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident/exposure and a diagnosed condition.⁶

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed COVID-19 and the accepted employment exposure, the Board finds that she has not met her burden of proof.

² *Id.*

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

⁴ *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).

⁵ 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.

⁶ *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.⁷ This latter section provides that written notice of injury must be given within 30 days.⁸ The context of section 8122 makes clear that this means within 30 days of the injury.⁹

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

Appellant initially filed a Form CA-1 for a traumatic injury, alleging that on July 21, 2023, she aided a patient with ambulation who put his arms around her and kissed her cheek. However, she acknowledged that she continued to care for this patient for the following two days, and that two other patients and two other employees also contracted COVID-19 on or after July 21, 2023. Furthermore, the employing establishment provided a statement indicating that one patient had tested positive for COVID-19 each day on July 21, 24, and 27, 2023, and that appellant had worked from July 17 through 27, 2023.

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.¹¹ As appellant's injuries occurred over more than a single workday or shift, the Board finds that OWCP properly determined that her claim was one for an occupational disease rather than a traumatic injury. As noted above, to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment;

⁷ *Supra* note 1 at § 8118.

⁸ *Id.*

⁹ *R.M.*, Docket No. 21-0446 (issued January 12, 2022); *D.P.*, Docket No. 21-0596 (issued August 31, 2021); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

¹⁰ 20 C.F.R. § 10.205(a); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

¹¹ 20 C.F.R. §§ 10.5(q), 10.5(ee); *see also R.M., id.*; *A.B.*, Docket No. 19-0842 (issued September 17, 2019); *J.F.*, Docket No. 10-2134 (issued July 6, 2011).

(2) file a Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.¹² Consequently, as appellant's COVID-19 was not caused by a traumatic injury, she is not entitled to COP.¹³

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. The Board further finds that appellant has not met her burden of proof to establish entitlement to COP.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹² *Supra* note 20.

¹³ *See R.M., id.; S.G.*, Docket No. 20-0538 (issued December 9, 2020); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.V.*, Docket No. 15-0942 (issued March 8, 2016).