United States Department of Labor
Employees' Compensation Appeals Board

P.N., Appellant	)
	)
and	) **Docket No. 22-1181**
	) **Issued: October 10, 2024**
DEPARTMENT OF THE ARMY,	)
INFORMATION SYSTEMS ENGINEERING	)
COMMAND, Fort Belvoir, VA, Employer	)
	)

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

On August 5, 2022 appellant filed a timely appeal from an April 5, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1181.[1]

On December 9, 2021 appellant, then a 57-year-old computer scientist, filed a traumatic injury claim (Form CA-1) alleging that on November 4, 2021 he sustained medical conditions due to the mandated COVID-19 vaccine. He indicated that he suffered from cardiomyopathy as a result of the mandated vaccine, as well as an enlarged heart, enlarged lungs, kidney failure, and heart failure. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty as he was complying with the COVID-19 vaccination mandate and his injuries were a direct result of the COVID-19 vaccine.

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[1] The Board notes that, following the issuance of OWCP's April 5, 2022 decision, appellant submitted new 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 new evidence for the first time on appeal. *Id*.

OWCP received a hospital report dated November 6, 2021, wherein Dr. Jean Pierre El Khoury, a Board-certified internist and critical care physician, noted his treatment of appellant for cardiac conditions, including an enlarged heart, due to a COVID-19 vaccine.

Appellant submitted additional evidence in support of his claim.

By decision dated February 22, 2022, OWCP accepted that the November 4, 2021 employment incident occurred as alleged and that medical conditions were diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish "that the claimed medical condition is causally related to the COVID-19 vaccine." OWCP found that appellant's treating physician did not "explain how the work event(s) caused or affected [his] condition...." Therefore, the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

On February 25, 2022 appellant requested reconsideration and submitted additional medical evidence.

In a March 3, 2022 report, Dr. Bijal A. Katarki, a Board-certified family medicine physician, indicated that appellant had received his first dose of a COVID-19 vaccine on October 14, 2021 and was admitted to the hospital and subsequently into the intensive care unit on November 5, 2021. He noted that appellant was incoherent and lost consciousness in the examination room. Dr. Katarki diagnosed cardiomyopathy, elevated troponin, and hypertensive emergency due to the COVID-19 vaccine. He recommended that appellant limit activities that could induce stress to his heart.

By decision dated April 5, 2022, OWCP denied modification of the prior decision.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

Executive Order No. 14043, effective September 9, 2021, mandated COVID-19 vaccination for most federal employees.[2] To provide coverage for claims for injury on or after September 9, 2021, resulting from receipt of the mandated COVID-19 vaccination for federal employees, OWCP issued FECA Bulletin No. 22-01, which outlines specific procedures for administering such claims.

FECA Bulletin No. 22-01 provides, *inter alia*, that when a claim is received for injury due to receipt of the COVID-19 vaccination, the claims examiner should: (1) determine if the vaccine was received prior to September 9, 2021; and (2) confirm that the employee is covered by the September 9, 2021 executive order. If the employee is covered by the executive order and vaccination was received on or after September 9, 2021, coverage may be afforded under FECA for employees impacted by the mandate who received required COVID-19 vaccinations on or after

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[2] Exec. Order No. 14043, 86 Fed. Reg. 50989 (September 9, 2021).

the date of the executive order for: (1) adverse reactions to the COVID-19 vaccination; and (2) injuries sustained as the direct result of an employee receiving their mandated vaccination.[3]

In denying appellant's claim, OWCP failed to consider whether coverage should be administered in accordance with FECA Bulletin No. 22-01. Rather, it evaluated the medical evidence of record and found that it was insufficient to establish an injury and/or medical condition causally related to the accepted employment incident. As OWCP did not apply FECA Bulletin No. 22-01, it failed to follow its own procedures.[4]

This case shall therefore be remanded for application of FECA Bulletin No. 22-01 with regard to appellant's claim.[5] Following any further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 5, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 10, 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

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[3] FECA Bulletin No. 22-01 (issued October 1, 2021).

[4] *See generally Order Remanding Case, R.S.,* Docket No. 23-0283 (issued December 8, 2023).

[5] *Id.*