

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

A.H., Appellant)	
)	
and)	Docket No. 23-1171
)	Issued: September 23, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
CENTRAL ARKANSAS VETERANS)	
HEALTHCARE SYSTEM,)	
North Little Rock, AR, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 15, 2023 appellant filed a timely appeal from a June 13, 2023 merit decision 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 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.

FACTUAL HISTORY

On March 23, 2023 appellant, then a 57-year-old physical therapist, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 due to factors of her federal

¹ 5 U.S.C. § 8101 *et seq.*

employment, including treating patients who tested positive for COVID-19 between March 6 and 10, 2023. She noted that she first became aware of her condition and realized its relationship to her federal employment on March 11, 2023. Appellant stopped work on March 13, 2023 and returned to work on March 20, 2023.

In a note dated March 12, 2023, Dr. Shahid Shah, a Board-certified family medicine specialist, noted that appellant complained of body aches, cough, fever, and nausea for the past two days. He indicated that she was “positive for COVID-19.” Dr. Shah advised that if appellant was completely asymptomatic after five days that she could return to work with use of a mask at all times for an additional five days.

In a duty status report (Form CA-17) dated March 20, 2023, Dr. Shah noted a diagnosis of COVID-19. He indicated that appellant was to quarantine as of March 12, 2023 and could return to full-duty work, effective March 20, 2023.

In a development letter dated March 29, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In an April 4, 2023 response to OWCP’s development questionnaire, appellant explained that she was exposed in the performance of her duties as a staff physical therapist on ward 3C, where she provided physical therapy treatment to three patients over the course of four days for a total of three hours. During that time, two of the three patients tested positive for COVID-19. Appellant noted that she was wearing personal protective equipment during the exposures, and that she was not exposed to COVID-19 outside of work prior to the onset of her symptoms on March 11, 2023.

In a March 17, 2023 medical report, Dr. Steven Kyser, a Board-certified family medicine specialist at the employing establishment’s facility, noted that appellant was a physical therapist who had treated COVID-19 positive patients, and then developed congestion, headache, fever, body aches, chills, and nausea. He indicated that appellant tested positive for COVID-19 on an at-home test on March 13, 2023, and then went to a local urgent care facility for confirmation. Dr. Kyser noted as causality, “3C outbreak, took care of positive patients.” He diagnosed COVID-19 infection and recommended quarantine. Dr. Kyser opined that appellant’s factors and conditions of employment were the direct cause of the COVID-19 infection.

In a follow-up letter dated May 9, 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 March 29, 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 thereafter received duplicate copies of evidence previously of record, as well as an undated COVID-19 antigen test result, which indicated that appellant had tested positive for COVID-19.

By decision dated June 13, 2023, OWCP denied the claim, finding that the medical evidence was insufficient to establish a causal relationship between the diagnosis of COVID-19

and the accepted employment exposure. Consequently, it found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 on 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

ANALYSIS

The Board finds that appellant has 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 March 17, 2023 medical report, wherein Dr. Kyser, an employing establishment physician, noted that appellant was a physical therapist who had treated COVID-19 positive patients, and then developed congestion, headache, fever, body aches, chills, and nausea. He indicated that appellant tested positive for COVID-19 on an at-home test on March 13, 2023, and then went to a local urgent care facility for confirmation. Dr. Kyser noted as causality, “3C outbreak, took care of positive patients.” He diagnosed COVID-19 infection and recommended quarantine. Dr. Kyser opined that appellant’s factors and

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

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.

conditions of employment were the direct cause of the COVID-19 infection. This evidence, therefore, establishes a causal link between a diagnosis of COVID-19 and the accepted employment exposure.⁷

As the medical evidence of record is sufficient to establish causal relationship between appellant's diagnosis of COVID-19 and the accepted employment exposure, the Board finds that appellant has met her burden of proof.⁸ The case shall, therefore, be remanded for payment of medical expenses and any attendant disability.

CONCLUSION

The Board finds that appellant has 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 13, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 23, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁷ See FECA Bulletin No. 23-02 (issued December 15, 2022). The Board notes the unique nature of COVID-19 as a highly contagious, airborne disease. As such, the Board recognizes that a medical opinion containing a pathophysiological explanation may be difficult to obtain under these circumstances.

⁸ *Id.*; see generally *D.M. (T.M.)*, Docket No. 19-0358 (issued March 19, 2020).