

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

I.C., Appellant	)	
	)	
and	)	Docket No. 24-0048
	)	Issued: September 23, 2024
DEPARTMENT OF VETERANS AFFAIRS,	)	
SAN FRANCISCO VETERANS AFFAIRS	)	
MEDICAL CENTER, San Francisco, CA,	)	
Employer	)	
	)	

*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 October 16, 2023 appellant filed a timely appeal from a September 19, 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 July 19, 2023 appellant, then a 58-year-old licensed practical nurse, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 while in the performance of duty. She explained that she was performing her normal work duties at the employing establishment when there was a COVID-19 outbreak among her coworkers. Appellant noted that she first became aware of her condition on June 30, 2023 and realized its relation to her federal employment on July 3, 2023. She stopped work on July 3, 2023 and returned to work on July 17, 2023.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result dated July 3, 2023, which confirmed that she tested positive for COVID-19 at the employing establishment facility on that date.

In a statement dated July 19, 2023, appellant noted that there was a COVID-19 outbreak in the clinic where she worked after the mandatory mask requirement was lifted. She indicated that her last day at work was June 30, 2023 and she experienced symptoms that evening. Appellant performed a COVID-19 home test which was positive, and she reported her condition to the employing establishment health center on July 3, 2023. She then took a PCR test at the employing establishment facility later that day, which was also positive for COVID-19. Appellant remained at home for the rest of the week and tested negative on July 10, 2023. She returned to work on July 11, 2023.

In a development letter dated July 20, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate development letter of the same date, it requested that the employing establishment provide additional information regarding the alleged exposure. OWCP afforded the employing establishment 30 days to respond.

In a July 27, 2023 email responding to the development letter, A.P., the employing establishment clinic director, concurred with appellant's statements and allegations relative to the COVID-19 claim. He indicated that the patient care area did not require masks and employees would only discover patient symptoms after exposure to them during the pre-visit check-in. A.P. advised that the COVID-19 masking policy was updated and all employees were provided with personal protective equipment including masks, gloves, and face shields. He noted that when appellant was diagnosed with COVID-19 there were other employees who were also diagnosed with the same illness.

In a July 31, 2023 response to OWCP's development letter, appellant noted that she was exposed to COVID-19 prior to testing positive at work. She described her employment-related exposure noting that several people in her work unit were exposed to and diagnosed with COVID-19 during a clinic outbreak. Appellant noted that the nature and extent of the exposure was unknown, but several people in her clinic were diagnosed with COVID-19.

In a follow-up letter dated August 18, 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 July 20, 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. No additional evidence was received. In a September 7, 2023 note, Dr. Nelson DeGuzman, a Board-certified internist, confirmed that appellant tested positive for COVID-19 on July 3, 2023. He advised that this diagnosis coincided with an outbreak at the employing establishment clinic where she worked and where several individuals were also infected and missed work due to COVID-19. Dr. DeGuzman opined that appellant's diagnosis was directly related to exposure in the employing establishment clinic and her leave from work should be attributed to this exposure.

By decision dated September 19, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosis of COVID-19 and 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 their 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 period of FECA,<sup>3</sup> 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>4</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>5</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

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

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chidden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Elliott*, 41 ECAB 992 (1990).

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.<sup>6</sup>

### 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 September 7, 2023 report, wherein Dr. DeGuzman confirmed that appellant tested positive for COVID-19 on July 3, 2023. Dr. DeGuzman advised that this diagnosis coincided with an outbreak at the employing establishment clinic where she worked and where several individuals were also infected and missed work due to COVID-19. He opined that appellant's diagnosis was directly related to exposure in the employing establishment clinic and her leave from work should be attributed to this exposure. Dr. DeGuzman's report, therefore, establishes a causal link between a diagnosis of COVID-19 and the accepted employment exposure.<sup>7</sup>

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.<sup>8</sup> 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.

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<sup>6</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.

<sup>7</sup> 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.

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 19, 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

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