

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

M.S., Appellant	)	
	)	
and	)	<b>Docket No. 24-0109</b>
	)	<b>Issued: September 25, 2024</b>
U.S. POSTAL SERVICE, SUISUN POST OFFICE, Suisun City, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 19, 2023 appellant filed a timely appeal from a November 8, 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 exposure to COVID-19 in the performance of duty, as alleged.

**FACTUAL HISTORY**

On August 11, 2023 appellant, then a 53-year-old sales and service distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed COVID-19 due to factors of her federal employment. She noted that she first became aware of her condition on

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

August 9, 2023, and realized its relation to her federal employment on August 11, 2023. Appellant stopped work on August 12, 2023.

In support of her claim, appellant submitted an August 11, 2023 note from Dr. Fouzia Anwar Aftab, a Board-certified family practitioner, who diagnosed COVID-19 and advised that appellant would be off work from August 11 through 19, 2023.

In an August 21, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In an August 28, 2023 response, appellant indicated that she was exposed to COVID-19 prior to testing positive for the condition at the employing establishment where she worked. She described her employment-related exposure, noting that as a sales and service distribution associate, she was constantly in close contact with customers while assisting them at the counter. Appellant indicated that customers would come and go, and employees did not know who had COVID-19. She noted that “at one point one of the customers was even bragging she just had COVID-19.” Appellant further indicated that the employing establishment ordered that the sneeze guards be removed, an act which further made the clerks susceptible to infections. She reported being exposed to customers at the counter every day from 9:30 a.m. to 4:30 p.m. Appellant indicated that she was unsure if other people in her work unit were also exposed to or diagnosed with COVID-19.

On September 8, 2023 OWCP received a polymerase chain reaction (PCR) laboratory test result dated August 11, 2023, which identified appellant as the patient and was positive for COVID-19.

In a follow-up letter dated September 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 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 issue a decision based on the evidence contained in the record. 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.

The employing establishment subsequently contended that appellant was on leave from August 1 through 8, 2023, and that when she returned to work on Wednesday, August 9, 2023, she was wearing a face mask and was already coughing. No additional evidence was received from appellant.

By decision dated November 8, 2023, OWCP denied appellant’s occupational disease claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

## 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,<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 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 not met her burden of proof to establish exposure to COVID-19 in the performance of duty, as alleged.

In an August 28, 2023 response to OWCP's August 21, 2023 development letter, appellant indicated that she was exposed to COVID-19 prior to testing positive for the condition at the employing establishment where she worked. She described her employment-related exposure, noting that as a sales and service distribution associate, she was constantly in close contact with customers while assisting them at the counter every day from 9:30 a.m. to 4:30 p.m. Appellant indicated that customers would come and go, and employees did not know who had COVID-19. She further indicated that the employing establishment ordered that the sneeze guards be removed, an act which further made the clerks susceptible to infections.

While appellant asserted that "at one point one of the customers was even bragging she just had COVID-19," appellant did not identify when this occurred. Also, she indicated that she was

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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 December 13, 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. Chadden, 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. Ellyett*, 41 ECAB 992 (1990).

<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.

unsure if other people in her work unit were also exposed to or diagnosed with COVID-19. Furthermore, the case record establishes that appellant was on leave from August 1 through 8, 2023, and when she returned on August 9, 2023, she was already coughing and wearing a face mask. On her Form CA-2 she noted that she did not become aware of her condition until August 9, 2023, and did not realize its relation to her federal employment until August 11, 2023. Therefore, appellant has not established that she exposed to COVID-19 while in the performance of duty.<sup>7</sup>

As the evidence of record is insufficient to establish exposure to COVID-19 in the performance of duty, as alleged, 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish exposure to COVID-19 in the performance of duty, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 8, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy 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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<sup>7</sup> See *J.W.*, Docket No. 19-0335 (issued July 2, 2019).