

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

_____)	
S.K., Appellant)	
)	
and)	Docket No. 24-0191
)	Issued: September 23, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
DULLES INTERNATIONAL AIRPORT,)	
Dulles, VA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 19, 2023 appellant filed a timely appeal from a June 26, 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 3, 2023 appellant, then a 53-year-old customs and border protection (CBP) officer, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 due to factors of her federal employment. She explained that, while on duty, she regularly encountered incoming passengers and travelers to the United States and had contact with them for prolonged periods of time. Appellant indicated that she first became aware of her condition and realized its relationship to her federal employment on February 14, 2023. She stopped work on February 14, 2023, and returned to work on February 25, 2023.

In a March 10, 2023 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary information.

Appellant submitted an urgent care work excuse note dated February 14, 2023 containing an illegible signature, indicating that appellant had a rapid antigen test which was positive for COVID-19.

In a March 11, 2023 response to OWCP's development letter, appellant reiterated that while on duty she encountered passengers and travelers who sought entry into the United States. She reported that she had contact with passengers for prolonged periods and might have been exposed to sick passengers with COVID-19. Appellant specifically described that on February 9, 2023 she processed a humanitarian flight that arrived from Nicaragua. She explained that there was a high chance that passengers on that flight were not fully vaccinated for COVID-19.

In a development letter dated April 11, 2023, OWCP informed appellant of the deficiencies of her claim for COVID-19. It advised her of the type of medical and factual evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate letter of the same date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's claim. OWCP afforded the employing establishment 30 days to respond.

In an April 19, 2022 response to OWCP's development letter, appellant indicated that she was exposed to COVID-19 at the processing stations at the employing establishment. She explained that, as a CBP officer, she processed incoming passengers on a daily basis during regular-duty assignments. Appellant noted processing a political refugee flight from Nicaragua that had passengers with multiple medical maladies. She reported that there were approximately 222 passengers on the flight and that she had eight hours of continuous exposure during the processing. Appellant indicated that she had no family vacations or group gatherings within the two weeks prior to testing positive for COVID-19.

In a medical record dated February 14, 2023, Dr. Tamara Mamedova, a Board-certified family medicine physician, noted that appellant worked in law enforcement and complained of sore throat and cough beginning the day prior to her examination. She reported that laboratory results showed that appellant underwent an antigen test and tested positive for COVID-19.

Dr. Mamedova diagnosed COVID-19, unspecified acute lower respiratory infection, and influenza.

In a follow-up letter dated May 16, 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 April 11, 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 an undated report, Dr. Dani Boulattouf, a Board-certified family medicine physician, indicated that appellant was treated at an urgent care facility on February 14, 2023. He noted that appellant tested positive for COVID-19 and was required to quarantine. The provider requested that appellant be excused from work for 10 days. Dr. Boulattouf opined that the COVID-19 diagnosis was “more than likely due to contact with and exposure of a positive individual at the workplace.” He explained that appellant’s contact with a positive individual during a work shift could be the reason for contracting COVID-19.²

In a June 5, 2023 letter to appellant, S.M., a field operations director for the employing establishment, explained that on February 9, 2023 the employing establishment processed a humanitarian flight that arrived from Nicaragua. He noted that appellant and other employees played a pivotal role in the mission by conducting admissibility processing and issuing 220 humanitarian paroles.

By decision dated June 26, 2023, OWCP accepted that appellant was exposed to the COVID-19 virus while working as a CBP officer and that she was diagnosed with COVID-19; however, it denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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

² Appellant resubmitted the undated note from urgent care, which included the printed name of the physician, Dr. Boulattouf, underneath his signature.

³ *Supra* note 1.

⁴ *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).

the employment injury.⁵ 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.⁶

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, 2023.⁷

ANALYSIS

The Board finds 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 report from Dr. Boulattouf, who indicated that appellant was treated at an urgent care facility on February 14, 2023. Dr. Boulattouf, reported that appellant tested positive for COVID-19 and was required to quarantine. He requested that appellant be excused from work for 10 days. Dr. Boulattouf reported that the COVID-19 diagnosis was “more than likely” due to contact with, and exposure from, a positive individual at the workplace. He explained that appellant’s contact with a positive individual during a work shift could be the reason for contracting COVID-19. Dr. Boulattouf’s report, therefore, establishes a causal link between a diagnosis of COVID-19 and the accepted employment exposure.⁸

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.⁹ The case shall, therefore, be remanded for payment of medical expenses and any attendant disability.

⁵ *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).

⁶ *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).

⁷ 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.

⁸ *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.

⁹ *Id.*; *see generally D.M. (T.M.)*, Docket No. 19-0358 (issued March 19, 2020).

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 26, 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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