

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

S.I., Appellant)	
)	
and)	
)	
DEPARTMENT OF VETERANS AFFAIRS,)	Docket No. 24-0509
JOHN L. McCLELLAN MEMORIAL)	Issued: September 23, 2024
VETERANS' HOSPITAL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 17, 2024 appellant filed a timely appeal from October 20, 2023 and January 2, 2024 merit decisions 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 July 31, 2023 appellant, then a 35-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2023 she was exposed to, and contracted, COVID-19 when working at her duty station while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged appellant's exposure while in the performance of duty, indicated that she stopped work on July 26, 2023, and that she returned to work on July 31, 2023. OWCP subsequently converted the claim to an occupational disease claim (Form CA-2).

In support of her claim, appellant submitted a July 26, 2023 polymerase chain reaction (PCR) test result, collected on July 25, 2023, which revealed that she tested positive for COVID-19.

In an August 1, 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.

On July 25, 2023 Dr. Steven M. Kyser, Board-certified in family medicine, diagnosed COVID-19 infection. Appellant reported working in an office with numerous other staff members, and on July 21, 2023 she was exposed to a staff member who tested positive for COVID-19. She indicated that they shared office space and had multiple conversations and contact throughout the day. Appellant indicated that she did not wear a mask due to the mask mandate being lifted. She developed symptoms on July 25, 2023, and tested positive for COVID-19. Dr. Kyser noted physical findings of chills, body aches, headaches, congestion, runny nose, sneezing, and dry cough. He opined, with a reasonable degree of medical certainty, that appellant's diagnosis was a direct result of her employment exposure. Dr. Kyser noted that employee health contact tracing revealed a COVID-19 positive employee, she disclosed high-risk COVID-19 exposure in the performance of job duties and worked in an area of a COVID-19 outbreak at the time of illness. He noted appellant was quarantined.

In response to the development letter, on August 15, 2023, appellant indicated that she was exposed to a coworker who had COVID-19 on multiple occasions, as she shared a work area and met for multiple conversations. She further reported that they were in close proximity while in a meeting, which lasted over one hour. Appellant noted that contact tracing was performed. She reported limited exposure to COVID-19 outside of her federal employment.

In a follow-up September 11, 2023 letter, OWCP advised appellant it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from its August 15, 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 within the time allotted.

By decision dated October 20, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment exposure.

OWCP received additional evidence. Appellant submitted a November 2, 2023 addendum report from Dr. Kyser who noted that appellant shared an office space with an employee who was positive for COVID-19. He opined that the diagnosis of COVID-19 was a direct result of her employment exposure, and the employing establishment identified through contact tracing that she was exposed to an employee who was positive for COVID-19 during her tour of duty.

On November 15, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated January 2, 2024, OWCP's hearing representative affirmed the October 20, 2023 decision.

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

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.

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 reports of Dr. Kyser, an employing establishment physician. In a July 25, 2023 report, Dr. Kyser diagnosed COVID-19 infection. He related that appellant worked in an office with numerous other staff members, and on July 21, 2023 she was exposed to a staff member who tested positive for COVID-19. She indicated that they shared office space, and had multiple conversations, and contact throughout the day. Appellant indicated that she did not wear a mask due to the mask mandate being lifted. She developed symptoms on July 25, 2023, and tested positive for COVID-19. Dr. Kyser noted physical findings of chills, body aches, headaches, congestion, runny nose, sneezing, and dry cough. He opined, with a reasonable degree of medical certainty, that appellant's diagnosis was a direct result of her employment exposure. Dr. Kyser noted that employee health contact tracing revealed a COVID-19 positive employee, she disclosed high-risk COVID-19 exposure in the performance of job duties and worked in an area of a COVID-19 outbreak at the time of illness. He noted appellant was quarantined. A November 2, 2023 addendum report from Dr. Kyser noted that appellant shared an office space with an employee who was positive for COVID-19. He opined that the diagnosis of COVID-19 was a direct result of her employment exposure, and the employing establishment identified through contact tracing that she was exposed to an employee who was positive for COVID-19 during her tour of duty. 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.

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).

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2024 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

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

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