

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

M.M., Appellant)	
)	
and)	Docket No. 24-0615
)	Issued: September 23, 2024
U.S. POSTAL SERVICE, LOS ANGELES)	
PROCESSING & DISTRIBUTION CENTER,)	
Los Angeles, 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 May 20, 2024 appellant filed a timely appeal from a February 8, 2024 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 July 9, 2023 employment exposure.

FACTUAL HISTORY

On July 17, 2023 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2023 she contracted COVID-19 due to

¹ 5 U.S.C. § 8101 *et seq.*

exposure while in the performance of duty. She reported that on July 12, 2023 around 4:00 p.m. she began to feel fatigued and the following day she experienced severe migraine, sore throat, vomiting, diarrhea, burning eyes, muscle aches, and hot/cold sweats and chills. Appellant stopped work on July 12, 2023. On the reverse side of the form, the employing establishment controverted the claim.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) laboratory test result, collected on July 14, 2023, which revealed that she tested positive for COVID-19.

In a July 21, 2023 letter, the employing establishment controverted the claim, asserting that there was no evidence to establish fact of injury, and therefore, the claim should be denied.

A July 25, 2023 report of work status (Form CA-3) indicated that appellant stopped work on July 12, 2023, and returned to full-time regular-duty work on July 22, 2023.

In a development letter dated July 27, 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 and afforded her 60 days to respond. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's claim. It afforded the employing establishment 30 days to respond.

In an August 25, 2023 response, the employing establishment contended that appellant was not exposed to COVID-19 at work, and that, even though COVID-19 protocols had changed effective May 11, 2023, it still offered protective masks and gloves to its employees.

In a follow-up letter dated August 29, 2023, OWCP advised appellant that it conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the July 27, 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.

By decision dated October 11, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the events or incident occurred as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

Following OWCP's October 11, 2023 decision, appellant submitted an October 12, 2023 report, wherein Dr. Cindy Pham, a Board-certified internist related appellant's continued complaints of fatigue, headache, and shortness of breath. In her report, Dr. Pham noted that appellant was an employee of the employing establishment who claimed exposure to COVID-19 at work on July 9, 2023 after having a conversation with a coworker, who had been diagnosed with COVID-19. She reported that appellant was within six feet of the contact employee, the conversation lasted approximately 15 minutes, she was not wearing a mask at the time of the exposure and reported no known exposure to COVID-19 in a location other than work. Dr. Pham noted that exposure over 15 minutes was high risk for contracting the virus. Dr. Pham confirmed appellant's July 14, 2023 positive COVID-19 PCR test and diagnosed COVID-19. She also discussed appellant's July 17, 2023 examination findings, recorded on the fifth day of her

symptoms, which documented fever with a temperature of 103 degrees, headache, chest congestion, productive cough, sore throat, loss of taste and smell, and diarrhea. Dr. Pham explained that due to appellant's positive PCR test result, and her interaction with a coworker who was COVID-19 positive, which placed her at higher risk, the presentation was consistent with a probable exposure at work. She opined that in the absence of any other injury and based on appellant's clinical history, measurable objective examination findings, reported mechanism of injury, and medical records, her COVID-19 diagnosis was, more than likely than not, caused by the alleged employment exposure. Dr. Pham concluded that appellant returned to full-duty work on July 22, 2023 as her symptoms had resolved.

In a statement received on October 15, 2023, appellant responded to OWCP's development questionnaire and described the circumstances surrounding her injury.

On October 20, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an attending physician's report (Form CA-20) dated October 12, 2023, Dr. Pham repeated her prior diagnosis and opinions.

Following a preliminary review, by decision dated November 21, 2023, OWCP's hearing representative vacated the October 11, 2023 decision and remanded the case for OWCP to further develop the claim. The hearing representative instructed OWCP to change the date of the claimed injury to July 9, 2023, to request that the employing establishment address the claimed exposure based on the corrected July 9, 2023 date, and to address Dr. Pham's supportive medical opinion to be followed by a *de novo* decision.

On November 27, 2023 the employing establishment continued to contend that appellant was not exposed to COVID-19 at work.

By *de novo* decision dated February 8, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her diagnosed COVID-19 condition was causally related to the accepted July 9, 2023 employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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, 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

² *Id.*

employment injury.³ 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.⁴

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, 2023.⁵

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosis of COVID-19 causally related to the accepted July 9, 2023 employment exposure.

In support of her claim, appellant submitted an October 12, 2023 report, wherein Dr. Pham related appellant's continued complaints of fatigue, headache, and shortness of breath. In her report, Dr. Pham noted that appellant was an employee of the employing establishment who claimed exposure to COVID-19 at work on July 9, 2023, after having a conversation with a coworker, who had been diagnosed with COVID-19. She reported that appellant was within six feet of the contact employee, the conversation lasted approximately 15 minutes, she was not wearing a mask at the time of the exposure and reported no known exposure to COVID-19 in a location other than work. Dr. Pham noted that exposure over 15 minutes was high risk for contracting the virus. Dr. Pham confirmed appellant's July 14, 2023 positive COVID-19 PCR test and diagnosed COVID-19. She also discussed appellant's July 17, 2023 examination findings, recorded on the fifth day of her symptoms, which documented fever with a temperature of 103 degrees, headache, chest congestion, productive cough, sore throat, loss of taste and smell, and diarrhea. Dr. Pham explained that due to appellant's positive PCR test result, and her interaction with a coworker who was COVID-19 positive, which placed her at higher risk, the presentation was consistent with a probable exposure at work. She opined that in the absence of any other injury, and based on appellant's clinical history, measurable objective examination findings, reported mechanism of injury, and medical records, her COVID-19 diagnosis was, more than likely than not, caused by the alleged employment exposure. Dr. Pham's report, therefore,

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ 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.

establishes a causal link between a diagnosis of COVID-19 and the accepted employment exposure.⁶

As the medical evidence of record is sufficient to establish causal relationship between appellant's diagnosis of COVID-19 and the accepted July 9, 2023 employment exposure, the Board finds that appellant has met her burden of proof.⁷ 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 July 9, 2023 employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 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

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

⁶ 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.

⁷ *Id.*; see generally *D.M. (T.M.)*, Docket No. 19-0358 (issued March 19, 2020).