

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

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<b>M.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0765</b>
	)	<b>Issued: September 23, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>EDWARD HINES, JR. MEDICAL CENTER,</b>	)	
<b>Hines, IL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 16, 2024 appellant filed a timely appeal from a May 31, 2024 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 his burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

**FACTUAL HISTORY**

On December 14, 2023 appellant, then a 41-year-old electronics technician, filed an occupational disease claim (Form CA-2) alleging that he contracted COVID-19 due to factors of his federal employment. He attributed his condition to working all day near an employee who had

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

returned to work after he had COVID-19. Appellant related that he first became aware of his condition on November 29, 2023, and realized it was caused by his federal employment on December 4, 2023. He stopped work on December 4, 2023, and returned on December 13, 2023.

In a supplemental statement received on December 14, 2023, appellant explained that on November 28 and 29, 2023 he worked in the same workspace within six feet of coworker J.M. who had earlier contracted COVID-19.

Polymerase chain reaction (PCR) test for COVID-19 obtained on December 4, 2023 indicated that appellant tested positive for COVID-19.

On December 5, 2023 Dr. Steve Kalmar, an emergency medicine specialist, Chief of Employee Occupational Health at the employing establishment, noted that appellant had advised that he tested positive for COVID-19. He related that appellant was contacted by the employing establishment's occupational health and was placed in self-isolation.

In a development letter dated December 15, 2023, OWCP informed appellant of the deficiencies of his claim and requested that he submit additional factual and medical evidence, including an opinion from a physician addressing how the identified work incident caused or contributed to a diagnosed medical condition, and attached a questionnaire for her completion. It afforded appellant 60 days to respond.

On December 15, 2023 the employing establishment challenged appellant's claim, contending that he had failed to submit sufficient medical evidence to establish an injury or medical condition causally related to his employment.

In an e-mail dated December 18, 2023 coworker J.M. related that he worked in the same office with appellant. J.M. recounted that he tested positive for COVID-19 on November 20, 2023 and had gone into isolation. He returned to work on November 28, 2023.

In a note dated January 4, 2024, Dr. Glenn Weiss, a Board-certified family practitioner, stated that appellant was off work from December 4 through 13, 2023 due to a COVID-19 infection, and that he could return to work on December 14, 2023, with no restrictions.

In a follow-up development letter dated January 16, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the December 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.

In a note dated February 6, 2024, Dr. Weiss opined that it was highly likely that appellant contracted COVID-19 from a coworker working less than five feet away from him, given that the coworker was diagnosed with COVID-19 shortly before appellant contracted COVID-19.

By decision dated February 21, 2024, OWCP denied appellant's occupational disease claim finding that appellant had established the factual basis of his claim, including a diagnosis of COVID-19, and that he was within the performance of duty, but further finding that he had not submitted sufficient medical evidence to establish causal relationship.

In a note dated February 26, 2024, Dr. Weiss opined that it was highly likely that appellant contracted COVID-19 from a coworker working less than five feet away from him, given that the coworker was diagnosed with COVID-19 shortly before appellant contracted COVID-19. He explained that appellant and the coworker breathed the same air in close proximity for eight hours uninterrupted, which led him to believe that there was a very high chance that the COVID-19 infection came from his coworker. Dr. Weiss further noted that appellant had no signs or symptoms of COVID-19 prior to the exposure at work related to his coworker who was positive for COVID-19.

On February 29, 2024 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 31, 2024, OWCP's hearing representative affirmed the decision of February 21, 2024.

### **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>

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

<sup>3</sup> *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 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).

<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.

### ANALYSIS

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

In support of his claim, appellant submitted a note dated February 26, 2024, wherein Dr. Weiss opined that it was highly likely that appellant contracted COVID-19 from a coworker working less than five feet away from him, given that the coworker was diagnosed with COVID-19 shortly before appellant contracted COVID-19. Dr. Weiss explained that appellant and the coworker breathed the same air in close proximity for eight hours uninterrupted, which led him to believe that there was a very high chance that the COVID-19 infection came from his coworker. Dr. Weiss further noted that appellant had no signs or symptoms of COVID-19 prior to the exposure at work related to his coworker who was positive for COVID-19. This evidence, 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 his 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 his burden of proof to establish a diagnosis of COVID-19 causally related to the accepted employment exposure.

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<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 May 31, 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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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