United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 22-0417**
	)	**Issued: August 8, 2022**
U.S. POSTAL SERVICE, POST OFFICE MEDICAL UNIT, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 January 27, 2022 appellant, through counsel, filed a timely appeal from a January 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish COVID-19 causally related to the accepted March 19, 2020 employment exposure.

FACTUAL HISTORY

On May 20, 2021 appellant, then a 55-year-old occupational health nurse, filed a traumatic injury claim (Form CA-1) alleging that in March 2020 she was possibly exposed to COVID-19 while in the performance of duty. She asserted that on March 19, 2020 an employee's daughter informed her that the employee was quarantining at home after being exposed to an uncle who had tested positive and was hospitalized for COVID-19. Appellant noted that the employee worked with her in the medical unit.

In a May 25, 2021 letter, the employing establishment controverted the claim. It contended that appellant's last day at work was on March 18, 2020 due to pending disciplinary issues. The employing establishment further contended that it had no knowledge that the employee who appellant was exposed to had COVID-19. The employing establishment contended that appellant's allegation was based on hearsay without merit. It also asserted that the alleged employee's last day at work was March 16, 2020 and on that day appellant worked in a different department. The employing establishment noted that appellant never worked closely with the employee and the only close contact she could have had with the employee was walking past the employee's office or briefly in a hallway. Lastly, it asserted that appellant did not submit any documentation containing a diagnosis of COVID-19 due to workplace exposure.

OWCP received medical evidence from Dr. Utibe Effiong, an attending internist. In an April 23, 2020 individual sick slip, Dr. Effiong noted that he evaluated appellant. He further noted that she related to him that she had been self-quarantining at home since March 19, 2020 due to exposure to a patient with COVID-19 at work. He opined that she may return to work on May 10, 2020.

In a May 17, 2020 individual sick slip, Dr. Effiong evaluated appellant and opined that she should continue to self-quarantine for seven additional days to complete an evaluation of her medical condition. He advised that she could tentatively return to work on May 25, 2020.

Dr. Effiong, in an individual sick slip dated May 26, 2020, requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. He advised that, if she was feeling well, then she may return to work on June 8, 2020.

In an August 1, 2020 letter, Dr. Effiong confirmed that he had evaluated appellant on April 23, 2020 and had issued an individual sick slip.

In a May 26, 2020 letter, Dr. Mark Owolabi, a Board-certified family practitioner, requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. He advised that she could return to work on June 8, 2020 if she was feeling well.

In letters dated July 6 and August 3 and 24, 2020, Dr. Steven Kwoh, a Board-certified psychiatrist, noted a history of his own treatment of appellant from June 6 through August 24,

2020 for adjustment disorder with anxiety. He requested that she be given additional time to recover from her diagnosed condition. Dr. Kwoh subsequently advised that appellant was expected to fully return to work on September 8, 2020.

A final report dated August 14, 2020 from Dr. Wael M. Bazzi, a family practitioner, indicated that appellant's laboratory test result was positive for "anti-SARS-COV-2 antibodies." Dr. Bazzi noted that results from antibody testing should not be used as the sole basis to diagnose or exclude SARS-COV-2 infection or to inform of infection status. He further related that positive results may be due to past or present infection with non-SARS-COV-2 coronavirus strains. Dr. Bazzi further noted that a positive result was indicative of exposure to the SARS-COV-2 virus and initiation of an immune response.

OWCP, by development letter dated May 25, 2021, informed appellant that the evidence of record was insufficient to establish her claim. It requested that she provide evidence to substantiate her COVID-19 diagnosis, either in the form of a positive polymerase chain reaction (PCR) COVID-19 test result or a positive antibody or antigen COVID-19 test result, together with contemporaneous medical evidence that she had documented symptoms of and/or was treated for COVID-19 by a physician. OWCP explained that, if no positive laboratory test was available, she should submit a COVID-19 diagnosis from a physician with a rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result was not available. It afforded appellant 30 days to respond.

OWCP subsequently received visit notes dated April 23 and May 17, 2020 from Dr. Effiong who indicated that appellant provided no responses to triage questions regarding her exposure to COVID-19. Dr. Effiong diagnosed cough; dyspnea, unspecified; encounter for examination and observation following a work accident; flu due to unidentified influenza virus without other respiratory manifest; and mild intermittent asthma with status asthmaticus.

In an August 14, 2020 chest x-ray report, Dr. A.J. Cook, a radiologist, provided an impression that no acute cardiopulmonary disease was seen. Handwritten annotations by an unknown author noted diagnoses of upper respiratory infection, cough, and other Coronavirus as the cause of diseases classified elsewhere, and that the encounter was for screening for other viral diseases.

OWCP, by decision dated July 14, 2021, accepted that the March 19, 2020 employment exposure occurred as alleged, but denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis of COVID-19 based on a positive COVID-19 PCR test or antibody/antigen COVID-19 test with supporting medical evidence from a physician contemporaneous to the accepted employment exposure. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 21, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received visit notes dated April 20, 22, and 23, and May 17, 2020 from Dr. Effiong. In the April 20, 2020 visit note, Dr. Effiong indicated that appellant responded, "Yes" to a triage questions that she had been exposed "to a known or expected COVID-19 patient in the

last 14 days." Additionally, in his visit notes, Dr. Effiong reiterated a history of the accepted March 19, 2020 employment exposure. He noted that appellant had self-quarantined since that date. Dr. Effiong indicated that she was not reported to have COVID-19 and was not hospitalized for flu-like symptoms or pneumonia in the 14 days prior to onset of her symptoms. He further reported that, during her illness she had fever, felt feverish, and experienced chills, muscle aches, runny nose, sore throat, cough, shortness of breath, nausea or vomiting, headache, abdominal pain, diarrhea. In the 14 days prior to symptom onset, appellant had traveled to Michigan, which had known COVID-19 cases. Dr. Effiong provided an assessment of COVID-19 exposure. He diagnosed mild intermittent asthma with status asthmaticus; cough; dyspnea, unspecified; encounter for examination and observation following a work accident; flu due to unidentified influenza virus without other respiratory manifest; and contact with and exposure to other viral communicable diseases.

A telephonic hearing was held on November 2, 2021.

By decision dated January 7, 2022, an OWCP hearing representative affirmed the July 14, 2021 decision. She found that appellant was a covered employee under section 4106 of the American Rescue Plan Act (ARPA) of 2021, but determined that the medical evidence of record was insufficient to establish a diagnosis of COVID-19 in connection with the accepted March 19, 2020 employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

[3] *Supra* note 1.

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *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).

[6] *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).

Section 4016 of ARPA provides that a covered employee is an individual:

"(i) who is an employee under section 8101(1) of title 5, United States Code, employed in the Federal service at any time during the period beginning on January 27, 2020, and ending on January 27, 2023;

(ii) who is diagnosed with COVID–19 during such period; and

(iii) who, during a covered exposure period prior to such diagnosis, carries out duties that-

(I) require contact with patients, members of the public, or co-workers; or
(II) include a risk of exposure to the novel coronavirus."[7]

FECA Bulletin 21-10 provides that to establish a diagnosis of COVID-19, an employee (or survivor) should submit:

"a. A positive Polymerase Chain Reaction (PCR) or Antigen COVID-19 test result; or

b. A positive Antibody test result, together with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician (a notice to quarantine is not sufficient if there was no evidence of illness); or

c. If no positive laboratory test is available, a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available.

In certain rare instances, a physician may provide a rationalized opinion with supporting factual and medical background as to why the employee has a diagnosis of COVID-19 notwithstanding a negative or series of negative COVID-19 test results."[8]

OWCP's procedures further provide that the evidence should establish manifestation of COVID-19 symptoms (or positive test result) within 21 days of the covered exposure.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish COVID-19 causally related to the accepted March 19, 2020 employment exposure.

OWCP found that appellant was a covered employee under section 4106 of the American Rescue Plan Act (ARPA) of 2021, but denied her traumatic injury claim, finding that the medical

[7] H.R. 1319, Public Law No. 117-2, 117th Congress (2021-2022) (enacted March 11, 2021).

[8] FECA Bulletin No. 21-10 (issued August 18, 2021).

[9] FECA Bulletin No. 21-09 (issued April 27, 2021).

evidence of record was insufficient to establish a diagnosis of COVID-19 in connection with the accepted March 19, 2020 employment exposure.

In support of her claim, appellant submitted a final report dated August 14, 2020 from Dr. Bazzi who indicated that appellant was positive for "anti-SARS-COV-2 antibodies." He noted that the positive antibody test result "may" be due to past or present infection with non-SARS-COV-2 coronavirus strains or exposure to the SARS-COV-2 virus and initiation of an immune response. While Dr. Bazzi found a positive antibody test result, his opinion as to the cause of this test result is speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have diminished probative value.[10] Further, this test was conducted more than 21 days following the alleged exposure and there is no contemporaneous medical report from a physician, which includes a diagnosis of COVID-19 or indicates treatment for this condition, within 21 days of exposure.[11] For these reasons, the Board finds that Dr. Bazzi's report is insufficient to establish appellant's claim.

Appellant also submitted medical evidence from Dr. Effiong. Dr. Effiong's reports establish that appellant was first evaluated on April 20, 2020, more than 21 days following the alleged exposure. On April 20, 2020 appellant reported exposure to an individual with COVID-19 during the past 14 days. Appellant's related exposure does not correlate with the accepted employment exposure of March 19, 2020. Dr. Effiong noted that appellant was not being evaluated for COVID-19. This report, therefore, does not provide contemporaneous evidence of treatment for COVID-19, within 21 days of the accepted March 19, 2020 employment exposure.[12]

In a May 26, 2020 individual sick slip, Dr. Effiong requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. While he indicated that appellant had a continuation of COVID-19 symptoms, he failed to provide a rationalized opinion supporting the diagnosis and an explanation as to why a positive test result was not available.[13] Dr. Effiong's remaining individual sick slips and visit notes dated April 23 and May 17, 2020 noted that appellant was exposed to COVID-19 at work and related her symptoms and respiratory diagnoses; however, he did not diagnose COVID-19. For these reasons, the Board finds that Dr. Effiong's reports are insufficient to establish appellant's claim.

Dr. Owolabi's May 26, 2020 report requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. Although he observed that appellant had continuing COVID-19 symptoms, he did not offer a rationalized opinion supporting the diagnosis.[14] As such, the Board finds that Dr. Owolabi's report is insufficient to establish appellant's claim.

[10] *See C.M.*, Docket No. 22-0114 (issued May 11, 2022); *P.P.*, Docket No. 21-1163 (issued March 30, 2022); *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

[11] *See supra* note 8.

[12] *Id*.

[13] *Id*.

[14] *Id*.

Dr. Kwoh's July 6, August 3 and 24, 2020 reports did not include a diagnosis of COVID-19 and, thus, this evidence is insufficient to establish appellant's claim.

Appellant also submitted an August 14, 2020 x-ray of the chest; however, the study showed no acute cardiopulmonary disease and, thus, provided no firm diagnosis of a medical condition. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused a diagnosed medical condition.[15] The report also provided handwritten annotations from an unknown author noting respiratory diagnoses. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[16] Thus, for these reasons, this report has no probative value and is insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence to establish a diagnosis of COVID-19 in connection with the accepted March 19, 2020 employment exposure, the Board finds that she 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 COVID-19 causally related to the accepted March 19, 2020 employment exposure.

[15] *See S.H.*, Docket No. 20-0113 (issued June 24, 2020); *M.L.*, Docket No. 18-0153 (issued January 22, 2020).

[16] *See T.P.*, Docket No. 21-0868 (issued December 21, 2021); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2022
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