United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Bloomington, MN, Employer	)	**Docket No. 25-0207** **Issued: February 4, 2025**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 28, 2024, appellant filed a timely appeal from an August 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 in connection with the accepted employment exposure.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On October 2, 2023, appellant, then a 43-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that he was exposed to, and contracted, COVID-19 due to factors of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on September 24, 2023. Appellant stopped work on September 24, 2023.

Appellant submitted a report dated October 1, 2023 from Dr. Samuel Kjome, a Board-certified family practitioner, who noted that appellant tested positive for COVID-19 on September 24, 2023. He reported that his symptoms improved, and he returned to work but continued to experience dizziness, lightheadedness, congested cough, and shortness of breath. Dr. Kjome diagnosed viral upper respiratory infection, COVID-19, and dysfunction of both eustachian tubes.

In an October 4, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. By separate letter of even date, it also requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond. No additional evidence was received.

In a follow-up letter dated November 1, 2023, 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 October 4, 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 response to the development letter, appellant submitted a December 21, 2023 statement indicating that he was exposed to a coworker who had tested positive for COVID-19 at the employing establishment and noted that they worked together every day. He also noted potential COVID-19 exposure while shopping for groceries.

By decision dated December 27, 2023, OWCP denied appellant's occupational disease claim. It found that he had not submitted medical evidence sufficient to establish a diagnosis of COVID-19 in connection with the accepted employment exposure.

On June 24, 2024, appellant requested reconsideration.

In support thereof, appellant submitted an October 27, 2023 report, wherein Lisa Weniger, a physician assistant, treated appellant for possible long COVID-19 symptoms. He reported being diagnosed with COVID-19 one month prior and continued to experience lightheadedness, dizziness, and brain fog. Ms. Weniger diagnosed long COVID-19 and dizziness.

Appellant was treated by Neil Robinson, a nurse practitioner, on November 8, 2023, in follow up for long COVID-19. Mr. Robinson reported that appellant was diagnosed by a home antigen test in late September after exposure to someone at his workplace and continued to experience dizziness, light headedness, and brain fog. He diagnosed long COVID-19 and elevated

thyroid-stimulating hormone and referred appellant for occupational therapy. In occupational therapy notes dated November 22 and December 6, 2023, Mr. Robinson diagnosed long COVID-19, headache, fatigue, and brain fog. He discharged appellant from therapy on December 6, 2023. On December 20, 2023, Mr. Robinson treated appellant in follow up for hypothyroidism. He related that appellant experienced significant fatigue, dizziness, and headaches thought to be due to long COVID-19. Mr. Robinson diagnosed hypothyroidism, long COVID-19, dizziness, nonintractable headache, and chest pain, unspecified, and continued occupational therapy.

On December 3, 2023, Jessica Lomheim, a nurse practitioner, diagnosed long COVID-19. Appellant reported dizziness, vertigo, and headaches.

Dr. Stephen Schwartz, a Board-certified family practitioner, treated appellant on June 19, 2024, for long-haul COVID-19 syndrome and thyroid disorder. He noted that despite not having a confirmed COVID-19 polymerase chain reaction (PCR) test, which he opined would not be of clinical value at this point, far post infection, symptoms were consistent with long-haul COVID-19 syndrome and thyroid dysfunction.

In a statement dated June 20, 2024, appellant indicated that on September 24, 2023 he took a home antigen test, which revealed that he was positive for COVID-19. Appellant noted that during a two-week period before he tested positive there were at least four people at his checkpoint who had tested positive for COVID-19. He indicated that he sought treatment on October 27 and November 8, 2023 and was diagnosed with long COVID-19 and Hashimoto disease. Appellant related experiencing symptoms of dizziness, lightheadedness, brain fog, and migraines. He indicated that, prior to contracting COVID-19 at work, he did not experience any symptoms. Appellant attended occupational therapy to assist with his long COVID-19 symptoms.

OWCP received leave information for appellant, a tabulation of work-related COVID-19 cases, and an illegible image titled "Image of positive antigen test with date in background."

By decision dated August 2, 2024, OWCP denied modification of the December 27, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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

[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).

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]

To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive PCR or Antigen COVID-19 test result; or (2) 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 (3) 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 laboratory test result is not available. Self-administered COVID-19 tests, also called "home tests," "at-home tests," or "over-the-counter (OTC) tests" are insufficient to establish a diagnosis of COVID-19 under FECA unless the administration of the self-test is monitored by a medical professional and the results are verified through documentation submitted by such professional.[7]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosis of COVID-19 in connection with the accepted employment exposure.

In support of his claim, appellant submitted an October 1, 2023 report from Dr. Kjome, who noted that appellant tested positive for COVID-19 on September 24, 2023. Dr. Kjome diagnosed viral upper respiratory infection, COVID-19, and dysfunction of both eustachian tubes. In a June 19, 2024 report, Dr. Schwartz treated appellant for long-haul COVID-19 syndrome and thyroid disorder. He noted that despite not having a confirmed COVID-19 PCR test, symptoms were consistent with long-haul COVID-19 syndrome and thyroid dysfunction. However, Drs. Kjome and Schwartz' mere statements, without an explanation as to why a positive laboratory

[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.

[7] *Id.*

test result was not available, are insufficient to establish a COVID-19 diagnosis under FECA Bulletin No. 23-02.[8]

Appellant submitted reports from a physician assistant and nurse practitioner. However, certain healthcare providers such as nurse practitioners and physician assistants are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[9] Consequently, these medical findings or opinions are insufficient to meet appellant's burden of proof.

As the evidence of record is insufficient to establish a diagnosis of COVID-19 in connection with the accepted employment exposure, the Board finds that appellant has not met his 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 his burden of proof to establish a diagnosis of COVID-19 in connection with the accepted employment exposure.

[8] *Id*.

[9] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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