

¹ 5 U.S.C. § 8101 *et seq.*

COVID-19 as a result of factors of her federal employment. She noted that she had lost her senses of taste and smell and had a fever with chills. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on February 24, 2023. She stopped work on February 24, 2023, and returned on March 5, 2023.

In a development letter dated March 9, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. It requested that the employing establishment “provide all available assistance to obtain the supporting documentation necessary to facilitate this claim.” In a separate development letter dated March 9, 2023, it requested factual information from the employing establishment regarding appellant’s claim, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond. No additional evidence was received from appellant.

In a follow-up letter dated April 6, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the March 9, 2023 letter to submit the requested necessary 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.

On April 12, 2023 appellant completed OWCP’s factual questionnaire. She stated that she was exposed to COVID-19 while working in housekeeping at the employing establishment. Appellant noted that two people had been exposed at work, but she was the only one diagnosed with COVID-19. She stated that she did not know the individual to whom she was exposed, but that she worked at the employing establishment hospital where some of the wards were quarantined for COVID-19 patients.

OWCP received the first page of unsigned emergency department patient discharge instructions dated February 24, 2023 indicating a diagnosis of COVID-19 and provided general information regarding COVID-19. The emergency department patient discharge instructions appeared on the letterhead of the employing establishment and indicated that appellant was treated on that date by Dr. Khanh Nguyen, a physician Board-certified in emergency medicine.

In a letter dated May 11, 2023, the employing establishment replied to OWCP’s development letter. A supervisor stated that appellant’s duties required that appellant enter patient rooms to clean, and that the patients may or may not have had COVID-19; and that appellant should have been entering all rooms at least twice a day for no longer than 20 minutes. The supervisor further noted that she was not aware of appellant’s exposure to an individual with a COVID-19 diagnosis.

By decision dated May 15, 2023, OWCP denied appellant’s occupational disease claim. It found that the evidence supported that the alleged events occurred as described; however, the claim was denied as a diagnosis of COVID-19 was not established. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that she contracted COVID-19 due to exposure at work in the performance of duty. In a development letter dated March 9, 2023, OWCP requested that she provide factual and medical information and directed the employing establishment to assist appellant in obtaining “the supporting documentation necessary to facilitate this claim.” In a separate development letter dated March 9, 2023, OWCP requested factual information from the employing establishment regarding appellant’s claim, including comments from a knowledgeable supervisor. On May 11, 2023, the employing establishment replied to OWCP’s development letter with a supervisor’s reply to OWCP’s factual questionnaire. OWCP received the first page of unsigned emergency department patient discharge instructions dated February 24, 2023 indicating a diagnosis of COVID-19 and provided general information regarding COVID-19. The emergency

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.

department patient discharge instructions appeared on the letterhead of the employing establishment and indicated that appellant was treated on that date by Dr. Nguyen.

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁷ OWCP has an obligation to see that justice is done.⁸ OWCP's procedures provide that if it appears that the employing establishment has medical records in its possession pertaining to the injury, claims examiners should ask the employing establishment to submit copies of such records if they are not sent with the original submission.⁹ In the instant case, the record indicates that the employing establishment is the medical provider that evaluated appellant for COVID-19.

Therefore, the Board finds that the case must be remanded for further development of the claim with regard to appellant's medical treatment, evaluation, testing, and/or diagnosis of COVID-19. Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁷ *A.J.*, Docket No. 23-0883 (issued May 23, 2024); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013). *See e.g.*, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁸ *See C.S.*, Docket No. 23-0870 (issued August 2, 2024); *B.J.*, Docket No. 24-0322 (issued May 21, 2024); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.10b (June 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 17, 2025
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