United States Department of Labor Employees' Compensation Appeals Board

A.N., Appellant	-))	
and)	Docket No. 21-0657
DEPARTMENT OF VETERANS AFFAIRS, MICHAEL E. DeBAKEY VA MEDICAL)	Issued: June 28, 2022
CENTER, Houston, TX, Employer	_)	
Appearances: Appellant, pro se Office of Solicitor, for the Director		Case Submitted on the Record

ORDER GRANTING REMAND

Before:

JANICE B. ASKIN, Judge VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On March 25, 2021 appellant filed a timely appeal from a March 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). By that decision, OWCP denied her traumatic injury claim (Form CA-1) that she sustained COVID-19 on March 19, 2020 causally related to the accepted employment exposure. The Clerk of the Appellate Boards assigned Docket No. 21-0657 to appellant's appeal.

On April 30, 2021 the Director of OWCP filed a motion to remand with the Clerk of the Appellate Boards. He noted that appellant's alleged exposure to and diagnosis of COVID-19 in March 2020 is within the timeframe prescribed under the American Rescue Plan Act of 2021 (ARPA).² The Director, however, noted that OWCP did not analyze whether appellant qualified as a covered employee as defined by the ARPA because its March 3, 2021 decision was issued

¹ The Board notes that, following the March 3, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

 $^{^{2}}$ H.R. 1319, Public Law No. 117-2, 117th Congress (2021-2022) (enacted March 11, 2021).

prior to passage of the March 11, 2021 law. He requested that the March 3, 2021 decision be set aside. The Director further advised that, upon remand, that OWCP would determine, under ARPA and in compliance with FECA Bulletin No. 21-09 (issued April 29, 2021), whether appellant has met her burden to establish entitlement to FECA benefits for exposure to COVID-19 while in the performance of her federal duties.

On May 20, 2021 the Clerk of the Appellate Boards served appellant with a copy of the Director's motion to remand. No reply was received.

The Board, having duly considered this matter, grants the Director's motion. On remand, OWCP shall determine whether appellant has met her burden to establish entitlement to FECA benefits for exposure to COVID-19 while in the performance of her federal duties. Following other such further development, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the motion to remand filed by the Director of the Office of Workers' Compensation Programs is granted. The March 3, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: June 28, 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