



## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish that he contracted COVID-19 in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On February 10, 2021 appellant, then a 52-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2021 he was exposed to and contracted COVID-19 from a coworker. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty and indicated that he stopped work on January 27, 2021 and returned on February 8, 2021.

In a development letter dated February 11, 2021, OWCP advised appellant of the type of factual and medical evidence needed and provided appellant with a questionnaire. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding the alleged exposure. OWCP afforded both parties 30 days to submit the necessary evidence.

OWCP sent appellant an updated development letter dated April 26, 2021 advising him of the provisions of the recently enacted American Rescue Plan Act of 2021. It provided appellant with an additional 30 days to submit the necessary evidence. No response was received.

By decision dated May 27, 2021, OWCP denied appellant's claim as he failed to provide a copy of COVID-19 testing laboratory results or a statement from a physician indicating that he tested positive for COVID-19.

On June 25, 2021 appellant requested reconsideration of OWCP's May 27, 2021 decision. He enclosed a screenshot of a test result which stated that his appointment was completed on January 28, 2021 and indicated that an "oral swab" had a positive result. The screenshot did not specify a diagnosis of COVID-19, confirmed by a positive test result.

By decision dated July 13, 2021, OWCP denied modification of its May 27, 2021 decision. It found the test result submitted did not indicate the type of test administered or the diagnosis of the condition tested.

OWCP received a copy of a text message dated January 30, 2021, which stated that appellant's COVID-19 test results were ready and that appellant could follow an attached link to access his test results. Appellant also submitted a duplicate screenshot of the positive test result dated January 28, 2021.

On July 28, 2021 appellant requested reconsideration of OWCP's July 13, 2021 decision.

By decision dated September 14, 2021, OWCP denied appellant's request for reconsideration.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>3</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 period of FECA,<sup>4</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>5</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>6</sup>

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021<sup>7</sup> any claim made for COVID-19 by or on behalf of a “covered employee” for benefits under FECA will be deemed to have an injury proximately caused by exposure to COVID-19 arising out of the nature of the covered employee’s employment. A “covered employee” is defined by ARPA as an employee under 5 U.S.C. § 8101(a) and employed in the federal service at any time during the period beginning on January 27, 2020 and ending on January 27, 2023. A “covered employee” prior to a diagnosis of COVID-19 must have carried out duties that required a physical interaction with at least one other person (a patient, member of the public, or a coworker); or was otherwise subject to a risk of exposure to COVID-19.<sup>8</sup>

Exposure to COVID-19 alone is not sufficient to establish a work-related medical condition. Manifestation of COVID-19 must occur within 21 days of the covered exposure.<sup>9</sup> To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive Polymerase Chain Reaction (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 test result is not available.<sup>10</sup>

---

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> Public Law 117-2 (March 11, 2021).

<sup>8</sup> FECA Bulletin No. 21-09 (issued April 28, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> FECA Bulletin No. 21-10 (issued August 17, 2021).

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish that he contracted COVID-19 in the performance of duty.

Appellant has alleged, and the evidence is not in dispute, that he was a “covered employee” under the ARPA and that he was exposed to a coworker who had COVID-19 on January 22, 2021. He also filed a claim on February 10, 2021 alleging that he had developed COVID-19 within 21 days of his exposure to a co-employee who had COVID-19.<sup>11</sup> In support of his claim, appellant submitted a screenshot of a test result, which indicated that his appointment was completed on January 28, 2021 and that an oral swab revealed a positive result. However, this screenshot did not indicate the type of test performed, *i.e.*, a Polymerase Chain Reaction (PCR) or Antigen COVID-19 test result, or positive antibody test result with supporting medical documentation. The screenshot also did not specify the diagnosis of COVID-19, confirmed by a positive test result. This document was, therefore, insufficient to establish a diagnosis of COVID-19.<sup>12</sup>

As the medical evidence of record is insufficient to establish a diagnosis of COVID-19, 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.

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>13</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup>

---

<sup>11</sup> *Supra* note 8.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>15</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>16</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>17</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>18</sup>

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted a duplicate screenshot of a positive test result. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>19</sup> Appellant also submitted a copy of a text message that stated his COVID-19 test results were ready. However, the underlying issue in this case was whether appellant had submitted evidence of a valid COVID-19 test, establishing a COVID-19 diagnosis. The text message was new evidence; however, it did not provide any further evidence of the specific type of test appellant underwent and that the test results were positive for COVID-19. The text message did not submit relevant and pertinent new evidence to establish his COVID-19 diagnosis.<sup>20</sup> As appellant did not provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>21</sup>

---

<sup>15</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

<sup>16</sup> *Id.* at § 10.608(a); *see also* *A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>17</sup> *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>18</sup> *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>19</sup> *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>20</sup> *A.K., id., P.C.*, Docket No. 18-1703 (issued March 22, 2019).

<sup>21</sup> *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>22</sup>

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he contracted COVID-19 in the performance of duty. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 13 and September 14, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 14, 2022  
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

---

<sup>22</sup> *J.B.*, *supra* note 17; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).