

**United States Department of Labor
Employees' Compensation Appeals Board**

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K.T., Appellant)	
)	
and)	
)	Docket No. 23-0762
DEPARTMENT OF HOMELAND SECURITY,)	Issued: December 14, 2023
TRANSPORTATION SECURITY)	
ADMINISTRATION, APPLETON)	
INTERNATIONAL AIRPORT, Appleton, WI,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 2, 2023 appellant filed a timely appeal from a March 29, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish a diagnosis of COVID-19.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 28, 2022 appellant, then a 63-year-old compliance and inspection support officer, filed a traumatic injury claim (Form CA-1) alleging that she contracted COVID-19 on November 19, 2022 after being exposed to multiple passengers and coworkers through security checkpoints while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on November 19, 2022 and returned to work on November 29, 2022.

In support of her claim, appellant submitted a copy of a COVID-19 home test.

In a November 20, 2022 medical note, Dr. Roderick L. Hubert, a Board-certified internist, reported appellant's symptoms and an allergic reaction as a result of taking medication to treat COVID-19.

In a November 26, 2022 medical report, Dr. Corey S. Macrander, a Board-certified internist, reported that after contracting COVID-19 on November 20, 2022, appellant was experiencing worsening symptoms including sinus congestion, headaches, and chest pressure.

In a development letter dated February 22, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond. No additional evidence was received.

By decision dated March 29, 2023, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to establish a COVID-19 diagnosis. Therefore, 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 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,³ 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.⁴ 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.⁵

² *Id.*

³ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁴ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁵ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021⁶ 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-19.⁷

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. 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. Self-administered COVID-19 tests, also called “home tests,” “at-home tests,” or “over-the-counter 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19.

Appellant filed a claim on November 28, 2022 alleging that she had developed COVID-19 on November 19, 2022. In support of her claim, she submitted a photograph of a COVID-19 home test. However, this case record does not indicate that the home test was monitored by a health care professional. As noted, OWCP’s guidance provides that home 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

⁶ Public Law 117-2 (March 11, 2021).

⁷ ARPA, *id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

⁸ FECA Bulletin Nos. 21-09 (issued April 28, 2021), 21-10 (issued August 17, 2021), and 22-06 (issued February 16, 2022). FECA Bulletin No. 21-10 amended FECA Bulletin No. 21-09 in part to allow for a positive Antigen COVID-19 test result. FECA Bulletin No. 22-06 amended FECA Bulletin Nos. 21-09 and 21-10 to update COVID-19 claims processing guidelines relating to reinfection and home tests.

professional.⁹ The Board, therefore, finds that this evidence is insufficient to establish a diagnosis of COVID-19.

In support of her claim, appellant submitted a November 20, 2022 medical note, wherein Dr. Hubert reported her symptoms and an allergic reaction as a result of taking medication to treat COVID-19. OWCP also received a November 26, 2022 medical report, wherein Dr. Macrander reported that, after contracting COVID-19 on November 20, 2022, appellant was experiencing worsening symptoms including sinus congestion, headaches, and chest pressure. As noted above, OWCP's guidance requires that, if no positive laboratory test is available, appellant must submit a COVID-19 diagnosis from a physician together with a rationalized medical opinion supporting the diagnosis and an explanation as to why a positive laboratory test result is not available.¹⁰ Therefore, this evidence is also insufficient to establish a diagnosis of COVID-19.¹¹

As the evidence of record is insufficient to establish a diagnosis of COVID-19, the Board finds that appellant 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 a diagnosis of COVID-19.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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