

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

Y.D., Appellant	)	
	)	
and	)	Docket No. 23-0971
	)	Issued: December 7, 2023
U.S. POSTAL SERVICE, CORNELL POST	)	
OFFICE, Bronx, NY, Employer	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 5, 2023 appellant filed a timely appeal from an April 18, 2023 merit decision and a June 15, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosis of COVID-19; and (2) whether OWCP properly denied appellant's request for a review of the written record, pursuant to 5 U.S.C. § 8124(b), as untimely filed.

**FACTUAL HISTORY**

On April 19, 2022 appellant, then a 32-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2022 she contracted COVID-19 while in the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

performance of duty.<sup>2</sup> She alleged that her symptoms began on that date, and that she received a positive test result on April 15, 2022. On the reverse side of the claim form, an employing establishment supervisor acknowledged that appellant was injured in the performance of duty. She stopped work on April 13, 2022.

In support of her claim, appellant submitted an after-visit summary dated April 19, 2022, which noted that she was seen by Dr. Michael I. Lahn and was diagnosed with an upper respiratory infection and COVID-19. However, the summary noted “I will call you with results of the test.”

Also of record was a triage nurse report, which related that appellant called on April 27, 2022 indicating that her “[polymerase chain reaction] PCR test came back negative yesterday,” but that she was in the emergency room because of an asthma attack and an ear ache.

On June 24, 2022 OWCP received a laboratory result dated April 26, 2022, which indicated that appellant underwent a PCR test for COVID-19 on April 25, 2022; however, the result was negative for COVID-19. It subsequently received a June 14, 2022 report wherein Dr. K. Peter Rentrop, a Board-certified internist, noted that, due to symptoms of chest pain associated with dyspnea, palpitations, dizziness, and a previous abnormal echocardiography (ECG) test appellant underwent an exercise ECG test which was inconclusive.

Dr. Edward J. Brown, a Board-certified cardiologist, performed an examination on August 18, 2022. He related that, following appellant’s April 2022 COVID-19 illness, she experienced palpitations and chest discomfort with exertion. Dr. Brown recounted that, on July 16 and 17, 2022, while working in very hot weather, she felt dizzy and fatigued. Appellant experienced syncope while driving home in her car on July 17, 2022. Dr. Brown further related that she sought treatment at the emergency room, and received a presumed diagnosis of dehydration. He noted that heat intolerance and palpitations could be long COVID-19 symptoms. Dr. Brown diagnosed palpitations.

On August 23, September 20, December 20 and 27, 2022 and January 3, 2023 Ms. Carr provided additional work restrictions and treatment notes recounting that appellant had a history of asthma, and was diagnosed with COVID-19 in July 22 and continued to experience shortness of breath with activity. She requested evaluation for long COVID-19 and by cardiology.

In a March 15, 2023 development letter, OWCP informed appellant of the deficiencies of her COVID-19 claim. It advised her of the type of factual and medical evidence needed to establish her claim, and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an additional copy of the April 19, 2022 after-visit summary.

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<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxx777. On January 20, 2023 appellant filed a Form CA-1 alleging that she sustained heat dehydration and lost consciousness on July 17, 2022 while driving in the performance of duty. On the reverse side of the claim form, an employing establishment supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on July 18, 2022 and returned to work on July 26, 2022. Her claims have been administratively combined, with OWCP File No. xxxxxx777 serving as the master file.

By decision dated April 18, 2023, OWCP denied appellant's claim for COVID-19. It explained that the evidence of record was insufficient to establish a diagnosis of COVID-19. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 3, 2023 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. She provided additional evidence in support of her claim.

By decision dated June 15, 2023, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record. It found that the request was untimely filed, as it was dated June 3, 2023, more than 30 days after its April 18, 2023 merit decision. After exercising its discretion, OWCP's Branch of Hearings and Review further found that the issue in the case could equally well be addressed through the reconsideration process.

### **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 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,<sup>4</sup> 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.<sup>5</sup> 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.<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

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

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

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

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. 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 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

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

The Board notes that the case record contains a laboratory result dated April 26, 2022, which indicated that appellant underwent a PCR test for COVID-19 on April 25, 2022; however, the test result was negative for COVID-19.

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 rationalized medical opinion supporting the diagnosis, and an explanation as to why a positive laboratory test result is not available.<sup>10</sup>

In support of her claim, appellant submitted an after-visit summary dated April 19, 2022, which noted that she was seen by Dr. Lahn, and was diagnosed with an upper respiratory infection and COVID-19. However, the summary noted “I will call you with results of the test” and it did not identify the test used or otherwise indicate how the diagnosis of COVID-19 was reached.

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

<sup>9</sup> 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.

<sup>10</sup> *Id.*

Moreover, the summary did not include an opinion that appellant's diagnosis of COVID-19 was work related. Therefore, this evidence is insufficient to establish a diagnosis of COVID-19.<sup>11</sup>

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.

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

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary.<sup>12</sup> Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests that a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.<sup>13</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>14</sup> The date of filing is fixed by postmark or other carrier's date marking.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for a review of the written record, pursuant to 5 U.S.C. § 8124, as untimely filed.

OWCP's regulations provide that the request for an oral hearing or a review of the written record must be made within 30 days of the date of the decision for which a review is sought.<sup>16</sup> On June 3, 2023 appellant requested a review of the written record regarding OWCP's April 18, 2023 denial decision. As the request form was dated more than 30 days after the issuance of the April 18, 2023 decision, the Board finds that her request for a review of the written record was untimely filed. Therefore, OWCP's Branch of Hearings and Review properly found in its June 15, 2023

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<sup>11</sup> See *S.L.*, Docket No. 23-0421 (issued June 28, 2023); *L.L.*, Docket No. 22-1020 (issued June 28, 2023); *D.I.*, Docket No. 22-1366 (issued June 28, 2023); *K.Y.*, Docket No. 22-0975 (issued June 28, 2023); *R.F.*, Docket No. 23-0192 (issued June 27, 2023); *S.J.*, Docket No. 22-0925 (issued June 27, 2023).

<sup>12</sup> 5 U.S.C. § 8124(b)(1).

<sup>13</sup> 20 C.F.R. § 10.615.

<sup>14</sup> *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>15</sup> 20 C.F.R. § 10.616(a).

<sup>16</sup> *Id.*

decision that appellant was not entitled to review of the written record as a matter of right because her request was not made within 30 days of its April 18, 2023 decision.<sup>17</sup>

Although appellant's June 3, 2023 request for a review of the written record was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>18</sup> The Board finds that OWCP's Branch of Hearings and Review properly exercised its discretion in the June 15, 2023 decision by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence relevant to the issue at hand.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>19</sup> The Board finds that OWCP did not abuse its discretion by denying appellant's request for a review of the written record and thus it properly denied her request as untimely filed, pursuant to 5 U.S.C. § 8124(b).<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19. The Board further finds that OWCP properly denied her request for a review of the written record, pursuant to 5 U.S.C. § 8124 as untimely filed.

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<sup>17</sup> *W.W.*, *supra* note 14; *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *R.W.*, Docket No. 13-0044 (issued February 22, 2013); *A.L.*, Docket No. 09-1851 (issued March 9, 2010); *F.W.*, Docket No. 08-0722 (issued August 7, 2008).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** June 15 and April 18, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 7, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board