

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

L.C., Appellant)
)
and) **Docket No. 22-1341**
) **Issued: January 26, 2023**
U.S. POSTAL SERVICE, POST OFFICE,)
Chicago, IL, Employer)
)

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On September 20, 2022 appellant filed a timely appeal from an August 17, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-1341.¹

On June 14, 2022 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she developed COVID-19 on June 11, 2022 while in the performance of duty. She stopped work on June 9, 2022 and returned on July 1, 2022.²

In support of her claim, appellant submitted an undated photograph of what appears to be a COVID-19 at-home test strip with an illegible result.

¹ The Board notes that, following the August 17, 2022 decision, OWCP received additional evidence. 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 A July 21, 2022 report of work status (Form CA-3) indicated that appellant stopped work on June 9, 2022 and returned full-time with no restrictions on July 1, 2022.

OWCP also received an incomplete progress note from a June 23, 2022 encounter with Angelika Foley, a nurse practitioner, relating that appellant reported testing positive for COVID-19 with an at-home test.

In a June 30, 2022 note, Dr. Carol Hayes-Sharpley, a family practitioner, indicated that appellant was diagnosed with COVID-19 on June 11, 2022, was currently asymptomatic, and may return to work on July 1, 2022.

By development letter dated July 21, 2022, OWCP explained that appellant's claim was reviewed under the provisions of the American Rescue Plan Act (ARPA) of 2021 and notified her that the evidence submitted to date was insufficient to make a decision regarding her traumatic injury claim. It provided a factual questionnaire for her completion and explained that she was required to submit medical evidence to substantiate her diagnosis of COVID-19 as result of her federal employment. OWCP noted that such evidence could include: (1) a positive PCR or Antigen test result; (2) a positive Antibody result with contemporaneous medical evidence that the claimant had documented symptoms and/or was treated for COVID-19 (a notice to quarantine is not sufficient if there was no evidence of illness); or (3) a COVID-19 diagnosis from a physician with a rationalized opinion supporting the diagnosis and an explanation as to why a positive test result is not available. Appellant was afforded 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated August 17, 2022, OWCP denied appellant's claim, finding that she had not submitted the necessary medical evidence to establish a COVID-19 diagnosis. It therefore found that she had not established an injury as defined by the Federal Employees' Compensation Act³.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

Section 10.121 of OWCP's regulations provides that if a claimant submits factual evidence, medical evidence, or both in support of his or her claim, but OWCP determines that this evidence is not sufficient to meet the burden of proof, it will inform the claimant of the additional evidence needed and provide the claimant at least 30 days to submit the evidence required.⁴

The 30th day following July 21, 2022 was August 20, 2022. As OWCP issued its decision denying appellant's claim on August 17, 2022, less than 30 days after the July 21, 2022 development letter, the Board finds that OWCP did not fulfill its responsibility under section 10.121 of its regulations.⁵

³ 5 U.S.C. § 8101 *et seq.*

⁴ 20 C.F.R. § 10.121.

⁵ *Supra* note 5; *see D.L.*, Docket No. 20-1299 (issued May 5, 2022); *J.V.*, Docket No. 13-0295 (issued April 17, 2013) (when OWCP failed to provide 30 days to submit requested evidence, it failed to follow its regulation at 20 C.F.R. § 10.121).

Thus, the Board finds that this case must be remanded for proper application of section 10.121 of OWCP's regulations, allowing appellant 30 days to respond to the request for additional evidence, to be followed by a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 17, 2022 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: January 26, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board