

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

T.G., Appellant)	
)	
and)	Docket No. 21-1186
)	Issued: July 24, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 30, 2021 appellant filed a timely appeal from a July 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-1186.

On May 25, 2021 appellant, then a 50-year-old custodial group leader, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2020, she contracted COVID-19 while in the performance of duty. She noted that her job required close interaction with coworkers and contractors. On the reverse side of the claim form, A.T., an employing establishment supervisor, indicated that she could have been exposed to COVID-19 outside of her official duties. Appellant stopped work on October 25, 2020.

In a November 21, 2020 hospital note, Dr. Peter Stockmal, a Board-certified emergency medicine physician, diagnosed a viral upper respiratory infection and recommended a follow-up appointment with her primary care physician if her symptoms did not improve.

On November 27, 2020 Dr. Sarada Deshpande, a Board-certified internist, noted that appellant tested positive for COVID-19 on November 21, 2020 and that she should be excused from work beginning November 21 through December 1, 2020.

A December 1, 2020 progress note from Dr. Deshpande indicated that appellant had tested positive for COVID-19 on November 21, 2020, that she should be excused from work between December 1 through 4, 2020, and that she could return to work on December 7, 2020.

In a letter of controversion dated June 3, 2021, J.T., a health and resource management specialist for the employing establishment, informed OWCP that it had not received any medical documentation to support that appellant contracted COVID-19 while in the performance of duty, nor was there a medical condition diagnosed in connection with the injury or event. He indicated that her date of injury was October 23, 2020, however, she did not experience any symptoms until November 16, 2020, and did not test positive for COVID-19 until November 21, 2020.

In a June 21, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On November 21, 2020 Dr. Stockmal signed appellant's positive COVID-19 laboratory test result based on a Polymerase Chain Reaction (PCR) test. In hospital notes of even date, hospital staff detailed her COVID-19 symptoms of sore throat, headache, fatigue, and loss of taste and smell.

In a November 23, 2020 progress note, Dr. Deshpande related appellant's symptoms of chills, fever, and aching joints due to her positive COVID-19 diagnosis. In his November 27, 2020 progress note, he advised that she isolate due to her COVID-19 diagnosis from November 21 through December 1, 2020. On December 1, 2020 Dr. Deshpande held appellant off from work for the period December 1 through 4, 2020.

OWCP received a form report dated February 24, 2021 from Dr. Marina Khusid, a Board-certified family medicine physician, who diagnosed COVID-19 complications beginning on November 21, 2020. Dr. Khusid explained that she would be unable to perform duties requiring any exertion such as walking, pushing, or lifting and should receive medical treatment for post-COVID-19 complications.

In a June 28, 2021 form report, Dr. Khusid indicated that appellant's evaluation for post-COVID-19 complications were ongoing. She found that appellant was unable to perform any exertion including walking, pushing, or lifting. In a statement of even date, Dr. Khusid recommended that she be assigned stationary work and to avoid any exertion while undergoing treatment.

OWCP also received July 7, 2021 hospital records detailing appellant's past medical appointments for her COVID-19 diagnosis.

In a July 7, 2021 response to OWCP's development questionnaire, appellant alleged that her last physical interaction prior to developing COVID-19 symptoms was on October 23, 2020 when she attended shift meetings, entered employee offices, and touched several surfaces while cleaning the office. She related that on November 20, 2020, she experienced symptoms and went to the emergency room the following day.

By decision dated July 30, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosis of COVID-19. Thus, it concluded that appellant did not establish an injury in the performance of duty on October 23, 2020, as alleged.

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

An employee seeking benefits under FECA¹ 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,² 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.³ 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.⁴

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021⁵ 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-19.⁶

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.⁷ 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

¹ *Id.*

² *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *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).

⁴ *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).

⁵ Public Law 117-2 (March 11, 2021).

⁶ ARPA, *id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

⁷ FECA Bulletin No. 21-09 (issued April 28, 2021).

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 testing is 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

Paragraph 2 of FECA Bulletin No. 21-10 provides, *inter alia*, “The FECA program will review all COVID-19 claims previously denied in accordance with the guidance provided in FECA Bulletin No. 21-09 based on the submission of an antigen test without contemporaneous medical evidence to determine if the claim can now be accepted. This will occur without a request from the claimant. If the FECA program determines that the case can now be accepted under the ARPA, the case will be reopened under the Director’s own motion under Section 8128(a) of the FECA, and the case will be accepted. If this occurs, the claimant and employing agency will be notified.”

In light of the above-noted amendments, OWCP did not take into consideration all of the applicable criteria for establishing a diagnosis of COVID-19 when it denied appellant’s claim. This case shall therefore be remanded for consideration and application of FECA Bulletin Nos. 21-09, 21-10, and 22-06 with regard to appellant’s claim for COVID-19.⁹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

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.

⁹ *Order Remanding Case, B.S.*, Docket No. 21-1243 (issued June 7, 2023) (the Board remanded for proper application of FECA Bulletin Nos. 21-09, 21-10, and 22-06 with regard to appellant’s claim for COVID-19).

IT IS HEREBY ORDERED THAT the July 30, 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: July 24, 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