

an employing establishment supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 4, 2022.

In a note dated January 13, 2022, Dr. Robert Cavagnol, a general surgeon, confirmed that appellant had tested positive for COVID-19.

In a May 2, 2022 021 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 afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an additional copy of the January 13, 2022 note from Dr. Cavagnol; a record of a January 12, 2022 appointment; and a January 17, 2022 after-visit summary, which indicated that appellant was seen by Christian R. Gelok, a nurse practitioner, due to left calf pain.

By decision dated June 9, 2022, 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 21, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She provided additional evidence in support of her claim.

In a September 12, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for October 20, 2022 at 1:15 p.m. Eastern Standard Time (EST). The notice provided a toll-free telephone number and appropriate passcode to access the hearing. The hearing representative mailed the notice to her last known address of record. Appellant did not appear for the hearing and no request for postponement was received.

By decision dated October 31, 2022, OWCP found that appellant had abandoned her request for an oral hearing, as she had received written notification of the hearing 30 days in advance but failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ 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

² *Id.*

³ *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).

the employment injury.⁴ 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.⁵

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 laboratory test result is not available. Self-administered COVID-19 tests, also called “home tests,” “at-home tests,” or “over-the-counter (OTC) 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 -- ISSUE 1

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

Appellant filed a claim on January 31, 2022 alleging that she had developed COVID-19 within 21 days of her exposure while in the performance of duty.⁹ In support of her claim, appellant submitted a note dated January 13, 2022 from Dr. Cavagnol wherein he indicated that

⁴ *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).

⁵ *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).

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.

⁹ *Id.*

she had tested positive for COVID-19. He did not, however, identify the test used or otherwise explain how the diagnosis of COVID-19 was reached. 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.¹⁰ Dr. Cavagnol did not provide a rationalized opinion supporting a diagnosis of COVID-19 and an explanation as to why a positive laboratory test result was not available. Therefore, this evidence is insufficient to establish a diagnosis of COVID-19.

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹¹ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹² OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹³

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.616(a).

¹² *Id.* at § 10.617(b).

¹³ *KA.*, Docket No. 22-1168 (issued December 8, 2022); *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁴ 20 C.F.R. § 10.622(f); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *K.A.*, *id.*

Following OWCP's June 9, 2022 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 12, 2022 notice, a hearing representative notified her that he had scheduled her for a telephonic hearing for October 20, 2022 at 1:15 p.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.¹⁵ The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This presumption is commonly referred to as the mailbox rule.¹⁶ Appellant did not request a postponement and failed to call in to the scheduled hearing or otherwise provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear. The Board, therefore, finds that she abandoned her request for an oral hearing.¹⁷

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 determined that she abandoned her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the June 9 and October 31, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 27, 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

¹⁵ *K.A.*, *supra* note 13; *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹⁶ *K.A.*, *supra* note 13; *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

¹⁷ *Id.*