

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

D.S., Appellant)	
)	
and)	Docket No. 23-0225
)	Issued: July 20, 2023
U.S. POSTAL SERVICE, KENOSHA CARRIER)	
ANNEX, Pleasant Prairie, WI, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2022 appellant filed a timely appeal from a June 7, 2022 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 his burden of proof to establish a diagnosis of COVID-19.

FACTUAL HISTORY

On February 2, 2022 appellant, then a 34-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2022 he was exposed to COVID-19 while in the performance of duty. He stopped work on January 16, 2022 and returned to work on

¹ 5 U.S.C. § 8101 *et seq.*

January 31, 2022. Appellant submitted a photograph of a COVID-19 home rapid antigen test, indicating a positive result.

In an April 6, 2022 letter, the employing establishment controverted the claim.

In a development letter dated April 29, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence. No response was received.

By decision dated June 7, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a diagnosis of COVID-19. It concluded, therefore, that 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

Under section 401.6 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

² *Supra* note 1.

³ *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 *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 *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).

⁶ Public Law 117-2 (March 11, 2021).

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

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

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

Appellant filed a claim on February 2, 2022, alleging that he had developed COVID-19 within 21 days of his exposure while in the performance of duty.⁹ In support of his claim, appellant submitted a photograph of a home rapid antigen test for COVID-19. However, the case record does not indicate that the home test was monitored by a health care professional. As noted, OWCP’s guidance provides that a home test is insufficient to establish a diagnosis of COVID-19, unless the home test is monitored by a health care professional and the results are verified through documentation submitted by such professional.¹⁰ The Board, therefore, finds that appellant’s home rapid antigen test is insufficient to establish a diagnosis of COVID-19.

As the medical evidence of record is insufficient to establish a diagnosis of COVID-19, the Board finds that appellant has not met his 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 his burden of proof to establish a diagnosis of COVID-19.

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.*

¹⁰ *Id.*; see also *R.F.*, Docket No. 23-0192 (issued June 27, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 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