United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 21-0999**
	)	**Issued: June 6, 2023**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Dallas, TX, 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 June 21, 2021 appellant filed a timely appeal from a June 7, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0999.

On January 18, 2021 appellant, then a 40-year-old customs and border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2020 he contracted COVID-19 while in the performance of duty. He stopped work on December 25, 2020 and returned to work on January 18, 2021.

A January 6, 2021 laboratory report indicated that appellant had a positive nasal antigen test result for COVID-19.

OWCP received a report dated February 26, 2021 from an unidentifiable healthcare provider, who performed a COVID-19 antibody test, which was negative for COVID-19.

In a February 25, 2021 work excuse form, Samantha Diaz, a healthcare provider, confirmed that appellant had a positive COVID-19 test on January 6, 2021. The provider circled on the form that a positive test required 10 days of quarantine from the start of symptoms.

On April 6, 2021 appellant advised OWCP that, after his positive test, his healthcare provider had instructed him to quarantine and to seek medical attention if his symptoms worsened.

By decision dated June 7, 2021, OWCP denied appellant's traumatic injury claim. It found that the medical 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 the Federal Employees' Compensation Act[1] (FECA).

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

An employee seeking benefits under FECA[2] 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 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 2021[6] 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.[8] 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

[1] 5 U.S.C. § 8101 *et seq*.

[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).

[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 No. 21-09 (issued April 28, 2021).

COVID-19 diagnosis from 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.[9]

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 21-09 based on the submission of an antigen test without contemporaneous medical 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.[10] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

[9] 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.

[10] *See e.g., Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022), *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022) (the Board remanded these cases for proper application of FECA Bulletin No. 21-09).

IT IS HEREBY ORDERED THAT the June 7, 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: June 6, 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