

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

D.K., Appellant	)	
	)	
and	)	<b>Docket No. 21-1078</b>
	)	<b>Issued: June 7, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bellmawr, NJ, 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 July 6, 2021 appellant filed a timely appeal from a June 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1078.<sup>1</sup>

On March 29, 2021 appellant, then a 44-year-old custodial laborer, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2021 he contracted COVID-19 while in the performance of duty. He stopped work on January 11, 2021 and returned to work on January 29, 2021. No evidence was submitted in support of appellant's claim.

Appellant submitted a January 13, 2021 COVID-19 antigen test summary and a January 13, 2021 work-excuse note from an urgent care facility by an unknown provider with an illegible signature. The provider noted that appellant was positive for COVID-19 and was unable to work from January 10 through 21, 2021 because he had to self-quarantine for 10 days.

---

<sup>1</sup> The Board notes that appellant submitted additional evidence on appeal. However, 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.*

By decision dated June 4, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis of COVID-19.

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

An employee seeking benefits under the Federal Employees' Compensation Act (FECA)<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive Polymerase Chain Reaction or Antigen COVID-19 test result; (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

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> Public Law 117-2 (March 11, 2021).

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

<sup>8</sup> FECA Bulletin No. 21-09 (issued April 28, 2021).

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.<sup>9</sup>

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.<sup>10</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

---

<sup>9</sup> 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.

<sup>10</sup> 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 4, 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 7, 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